

1
UNITED STATES DISTRICT COURT
2
DISTRICT OF MASSACHUSETTS
34 UNITED STATES OF AMERICA)
5)
6 vs.) No. 1:11-cr-10286-DPW
7)
8 CATHERINE E. GREIG,)
9 Defendant.)
10
11 BEFORE: THE HONORABLE DOUGLAS P. WOODLOCK
12
13 SENTENCING HEARING
14
15 John Joseph Moakley United States Courthouse
16 Courtroom No. 1
17 One Courthouse Way
18 Boston, MA 02210
19 Tuesday, June 12, 2012
20 9:30 a.m.
21
22 Brenda K. Hancock, RMR, CRR
23 Official Court Reporter
24 John Joseph Moakley United States Courthouse
25 One Courthouse Way
Boston, MA 02210
(617) 439-3214

1 APPEARANCES:

2 UNITED STATES ATTORNEY'S OFFICE
3 By: AUSA Jack Pirozzolo
AUSA James D. Herbert
AUSA Mary B. Murrane
4 1 Courthouse Way, Suite 9200
Boston, MA 02210
5 On behalf of the United States of America.

6 LAW OFFICES OF KEVIN J. REDDINGTON
7 By: Kevin J. Reddington, Esq.
1342 Belmont Street, Suite 203
Brockton, MA 02301

8 - and -

9 THE LAW OFFICE OF JEFFREY K. CLIFFORD
10 By: Jeffrey K. Clifford, Esq.
21 Mayer Thomas J. McGrath Highway
11 Suite 501
Quincy, MA 02169
12 On behalf of the Defendant.

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1 (The following proceedings were held in open court
2 before the Honorable Douglas P. Woodlock, United States
3 District Judge, United States District Court, District of
4 Massachusetts, at the John J. Moakley United States Courthouse,
5 One Courthouse Way, Courtroom 1, Boston, Massachusetts, on
6 Tuesday, June 12, 2012):

7 THE CLERK: All rise.

8 (The Honorable Court entered the courtroom at 9:30 a.m.)

9 THE CLERK: This is Criminal Action 11-10286, United
10 States versus Catherine Greig.

11 THE COURT: Well, I think we have to do some
12 housekeeping at the outset to clarify exactly what is before me
13 and how.

14 Let me start, first, with the Preliminary Order of
15 Forfeiture here, which, pursuant to the Plea Agreement, has
16 Ms. Greig giving up her property rights including her rights to
17 intellectual property or publication rights. Those are
18 assigned to the United States. She is giving up everything
19 that was seized during the course of the investigation, and she
20 is giving up any property that might have been hers at the
21 apartment in Santa Monica.

22 Unless there is an objection, Mr. Reddington, I am
23 going to sign that.

24 MR. REDDINGTON: No problem, your Honor. Thank you.

25 THE COURT: So, I will allow the motion, which is

1 No. 105, for the forfeiture of the property.

2 Now, there are a series of submissions that have been
3 made under seal here, and I think it is important to establish
4 a protocol; in fact, a protocol has been established by the
5 Government.

6 But I have, for example, the Government's Motion
7 No. 108, which requests sealing of the Government's unredacted
8 Sentencing Memorandum and the three volumes of supporting
9 materials here. The Government did submit a redacted version
10 of the Sentencing Memorandum, which seems to me to be the
11 appropriate way of dealing with that, but I want to have a
12 redacted version of all three of the volumes as well, using the
13 same basic understanding, that is, not identifying addresses
14 and identities of persons who would not otherwise be
15 identified, and if there are issues that arise as a result of
16 investigations, of course that could be done. But I would like
17 to have that done by noon on Friday.

18 MR. PIROZZOLO: We can do that, your Honor.

19 THE COURT: So, I am allowing the Government's Motion
20 No. 108 to seal in accordance with this instruction, that is,
21 that there has to be filed redacted versions of the materials
22 that are sought to be sealed.

23 The Government has filed a Motion for Protective Order
24 to permit nondisclosure regarding an informant whose activities
25 may bear upon the conduct that is subject to consideration in

1 sentencing. That is No. 103. I cannot rule on that until I
2 have had an opportunity to hear exactly what the Government's
3 arguments are; it depends on the Government's arguments. So, I
4 am reserving that.

5 And then there is 114, which seeks the sealing of a
6 letter from an individual who I will identify as "PM." It is
7 the letter of May 16th, 2012. I will allow that, but it has to
8 be redacted. A redacted version of it has to be filed, again,
9 by noon on Friday.

10 Now, in addition, there are a number of submissions
11 through the Probation Office, and these sometimes do not make
12 it onto the record, so I want to be clear that they are on the
13 record.

14 There is attached to the Presentence Report the
15 statement of Paul C. McGonagle and his family, a letter from
16 Thomas Angeli. I do not see a reason for them to be sealed
17 and, as a consequence, I am going to direct the Clerk to file
18 them and docket them. That is the way in which I ordinarily
19 deal with anything that is submitted directly to me in
20 Chambers, and that is what I did with the letter from Maureen
21 England, that is, it gets docketed and provided to Probation so
22 that the parties can see it.

23 But, in any event, with respect to those statements of
24 Mr. McGonagle and Mr. Angeli, those will be filed, and I do not
25 see anything there that requires redaction.

1 There is a letter from Margaret McCusker that
2 Mr. Reddington submitted under seal. Again, I do not see a
3 reason for it to be under seal, Mr. Reddington. Is there
4 anything else?

5 MR. REDDINGTON: No, your Honor.

6 THE COURT: So, that will be filed by the Clerk as
7 well and docketed in its regular form.

8 Now, I have some materials from Ms. Griffin, the
9 Victim Witness Specialist in the U.S. Attorney's Office, that
10 have been submitted to me. They have not seemed to make their
11 way onto the docket. I think they should.

12 One is the Victim Impact Statement that Steven Davis
13 made, and the second is an e-mail of yesterday to Mr. Pirozzolo
14 from Ms. Griffin regarding the individuals who are identified
15 as NS and PM. Again, I think that e-mail can be redacted and
16 filed on the docket, and I will ask the Government to do that.

17 I have the submissions under the Crime Victims' Rights
18 Act, and in connection with that I have a notice from
19 Ms. Griffin that four persons, who I will identify
20 alphabetically, have requested to speak during the course of
21 the sentencing. Those are Timothy Connors, Steven Davis,
22 Patricia Donahue and Paul McGonagle, and I will give notice
23 that I am going to permit them to speak. I will explain at a
24 later point that I do not believe that that permission is
25 required by the Crime Victims' Rights Act, but there are very

1 specific reasons in this case that it seems to me that they
2 should be afforded that opportunity in this proceeding.

3 Now, in addition, I have the Government's submission
4 indicating that it is seeking an evidentiary hearing, and I
5 guess I want to understand what the dimensions of that are,
6 Mr. Pirozzolo.

7 MR. PIROZZOLO: Thank you, your Honor. Well, this is
8 going to be largely driven by any questions that the Court
9 thinks need to be answered by live testimony from agents.

10 THE COURT: Well, we have had this in connection with
11 the bail hearing. This is not a "Mother, may I?" kind of
12 circumstance. The Government adduces whatever evidence it
13 thinks is important, and I will rule on the evidence. My
14 intention is to identify those areas of dispute under the
15 Guidelines and rule on what legal issues I can, and then if the
16 parties have something more they want to offer or the rulings
17 indicate that there is a factual dispute that the parties want
18 to develop, I will do that.

19 Under present circumstances what do you anticipate?

20 MR. PIROZZOLO: There are three principal areas of
21 dispute, your Honor. The first and most significant is the
22 defendant's persistent claim that she did not know about either
23 the cash or the firearms that were in the apartment.

24 THE COURT: For purposes of sentencing, what
25 difference does the cash part make?

1 MR. PIROZZOLO: Well, it is relevant to the 3553(a)
2 factors.

3 THE COURT: In a general sort of way, but it is not
4 relevant to any Guidelines issue.

5 MR. PIROZZOLO: The existence of the cash in and of
6 itself does not bear on a specific guidelines issue, that's
7 correct. It does -- in a general sense, as you have
8 identified, it is relevant potentially to considering the
9 degree to which the defendant is accepting responsibility for
10 the conduct.

11 THE COURT: Is the Government on the basis of anything
12 it has seen so far withdrawing its view that the defendant is
13 entitled to three points?

14 MR. PIROZZOLO: Not yet, your Honor, but I think a lot
15 is going to depend on what happens at the evidentiary hearing.

16 THE COURT: Well, what does "yet" mean? Does it mean
17 that the defendant testifies and then you decide whether or not
18 she has been forthcoming?

19 MR. PIROZZOLO: Yes, your Honor.

20 And then the second area of dispute is the evidence of
21 the defendant's knowledge of Mr. Bulger's underlying offenses.
22 We believe that the PSR made that clear, but in yesterday's
23 Sentencing Memorandum there is a statement that's claiming she
24 did not know the degree of the underlying offenses, the type of
25 underlying offenses that he was faced with. We think the PSR

1 answers that, your Honor.

2 However, to the extent that there is still contest
3 over that, we intend to put in evidence, mostly evidence found
4 in the search that shows that she knew what was --

5 THE COURT: Is it anything beyond what I have in the
6 three binders, though?

7 MR. PIROZZOLO: No, no. It's in the documents that we
8 submitted.

9 And then the third area of dispute is a factual
10 dispute, is the degree to which the defendant was involved in
11 procuring identification documents from various individuals in
12 Santa Monica. In connection with the PSR and elsewhere the
13 defendant has taken a position that she had no role in
14 obtaining those documents. Through an agent, through
15 interviews of various individuals, the evidence contradicts
16 that assertion at least in a couple of respects.

17 The submissions that we have provided in the binders
18 are, we believe, sufficient for that purpose. However, to the
19 extent that Mr. Reddington wants to cross-examine an agent who
20 actually interviewed some of these people, we have an agent who
21 is available to testify.

22 THE COURT: All right.

23 MR. PIROZZOLO: We also separately submitted an
24 affidavit that is relevant to a variety of these issues that
25 details --

1 THE COURT: Again, in Volume I, I guess.

2 MR. PIROZZOLO: Correct. And also to the extent that
3 Mr. Reddington were to inquire of that agent, he is available
4 to testify on cross-examination as to the contents of that
5 affidavit.

6 THE COURT: Well, I think the most expeditious way,
7 then, to deal with this is for me to at least give an
8 indication of the legal issues that will generate my view with
9 respect to the objections of the Government and let the parties
10 respond as they see fit as to whether or not additional
11 information is necessary.

12 Of course, the *Advisory Guidelines* are advisory, they
13 are not mandatory, but you have to start there. So, the
14 parties, I guess, have laid out their respective positions.
15 The Probation Office says that the guideline here for purposes
16 of the Total Offense Level is 18, which generates a range of 27
17 to 33 months in prison, and the defendant indicates that she is
18 seeking a sentence at 27, which is within the *Guidelines* at the
19 low end.

20 The Government has filed some very extensive
21 objections, and it provides an alternative Total Offense Level
22 of 31, as a consequence of which the guideline would be 108 to
23 135 months in prison. The Government recommends 120 months,
24 which is roughly in the midrange of that.

25 At least as far as I can see, in looking through the

1 materials that have been submitted by the parties, there are
2 five guideline issues, and I want to pause to ensure that in
3 the course of the housekeeping that I did I have identified
4 every piece of written material that the parties have submitted
5 here, I have not missed anything in this.

6 Are there any other materials, written materials, that
7 any of the parties have?

8 MR. REDDINGTON: No, your Honor, not for the defense.

9 MR. PIROZZOLO: There is one that is referenced in the
10 Sentencing Memorandum that is a docketed entry that's relevant
11 to the obstruction of justice.

12 THE COURT: This is the Statement of Facts by the
13 defendant?

14 MR. PIROZZOLO: Well, there is the Statement of Facts
15 which is attached to the PSR, of course, but also in connection
16 with the bail hearing there was a submission that the
17 Government made in connection with detention. It's referenced
18 in the Sentencing Memorandum, but to the extent the statements
19 in that document are relevant --

20 THE COURT: Right. They are on the docket. But is
21 there anything else that I have not identified that may not be
22 on the docket?

23 MR. PIROZZOLO: The only other thing is within the
24 materials there is a disc, a variety of discs that include
25 various photos. Not all the photos that are particularly

1 relevant to the argument were separately blown up and copied,
2 and we have those as well. They are in the file --

3 THE COURT: Right.

4 MR. PIROZZOLO: -- but not necessarily highlighted.

5 THE COURT: So, let me turn to what I think are the
6 objections. I have gone through the objections in the
7 Presentence Report and I have tried to cull them by topic.
8 Some of the objections had to do with where things were located
9 in the Presentence Report and that sort of thing. I do not
10 think that is particularly relevant.

11 The five issues, as far as I see it, are the Base
12 Offense Level, that is, are we dealing here with more than mere
13 harboring, as the case law uses it; second, whether or not we
14 have vulnerable victims in the persons whose identities were
15 taken in an exchange of some sort; the third is whether or not
16 there was obstruction of justice that is attributable to the
17 defendant; the fourth is whether or not what was involved here
18 was what we will call "sophisticated means" and involved,
19 perhaps, relocation; and the fifth is the firearms, what, if
20 any, significance, for purposes of the guideline evaluation, is
21 to be attached to the large number of firearms found in the
22 apartment after the defendant and Mr. Bulger were taken into
23 custody.

24 Are there any other broad topics that seem to be at
25 issue here?

1 MR. PIROZZOLO: As to the *Guidelines*, no.

2 THE COURT: Well, let me deal, then, one by one. With
3 respect to the Base Offense Level, I am going to sustain the
4 Government's objection. This is more than mere harboring. It
5 is sufficient, I think, for the Government to rely on the fact
6 that there was in connection with harboring here or the
7 conspiracy to harbor aggravated identity theft or fraud,
8 whatever shorthand you use for this statute, that the defendant
9 has indicated by her plea to Count Three she engaged in.

10 The guideline has the effect of starting with what we
11 call "mere harboring," which is providing shelter, I suppose,
12 to a defendant, and that it sets at Level 20, but it takes that
13 cap off and goes to Level 30 if there is something more, and
14 the "something more" here -- although at the margins it would
15 be a litigable issue I think -- is clearly evident; that is,
16 the defendant was involved in more than simply providing a
17 shelter for Mr. Bulger. She provided a variety of things but,
18 more specifically, engaged in criminal activity, and so for
19 that reason the Base Offense Level is going to go up to 30.

20 I turn to the question of vulnerable victims, and this
21 is a little bit more difficult, I think. It may involve some
22 factual dispute. The Government takes the position, as I
23 understand it, that people whose identity papers are purchased
24 with some sort of consideration can, nevertheless, be victims.

25 The Probation Office took the position that "victim"

1 probably should be defined for purposes of the *Guidelines* under
2 the Crime Victims' Act. I do not believe that is the case.

3 But we are dealing here with a question of whether or
4 not we have an unusually impaired victim or person in the
5 language of the *Guidelines*, and that means an impaired capacity
6 to detect or prevent crime.

7 The factual issue, as I see it, is this: It appears
8 from the evidence that a number of the people, and it really
9 only requires one, but a number of the people whose identities
10 were possessed by Ms. Greig had problems with alcoholism, or
11 drugs, or they were homeless or they had mental disturbances.

12 But I think that is not enough. It seems to me the
13 Government has to demonstrate that these were not people who
14 were capable of making the exchange, that is to say, "It is
15 worth it to me to take \$200 for my identity." I have in mind
16 that at least one of the individuals in a document that will be
17 redacted but put on the record indicates nothing bad happened
18 to her as a result of the identity being taken from her or
19 giving the identity to Mr. Bulger and Ms. Greig.

20 So, as a matter of law it seems to me that, in order
21 to establish that there were vulnerable victims, I have to have
22 evidence of an impaired capacity to detect and prevent crime,
23 which I will define as lacking the capacity to make the
24 exchange because they simply did not know what they were doing
25 here. In looking at the materials, I do not see that.

1 Mr. Pirozzolo, do you want to address that?

2 MR. PIROZZOLO: Yes, your Honor.

3 Within the materials -- well, let me start more
4 broadly.

5 The premise, as I understand from the Court's point of
6 view, is whether they had an ability to engage in the exchange.

7 THE COURT: I think the way it goes for me is, putting
8 to one side mental or emotional or substance abuse problems,
9 people are free actors, they make their own choices, and so
10 someone who sells an identity to someone else is not easily
11 described as a victim, although I see loose language in some of
12 the cases that suggests otherwise. They are accomplices.

13 Now, in order to be a vulnerable victim, from my
14 perspective here -- you can argue to the contrary if you
15 want -- is that you have to show these are people who did not
16 know what they were doing or were the subject of duress or such
17 overbearing as would result in a court, for instance, creating
18 recision of the transaction.

19 MR. PIROZZOLO: Well, I think the evidence shows that,
20 whether it is duress or overbearing, what Mr. Bulger and
21 Ms. Greig did was to target people whose ability to understand
22 and perceive and resist the temptation of \$200, \$250, to turn
23 over their IDs was so compromised by their dependence on
24 alcohol or substance abuse, or in the case of PM mental
25 illness, that they were exploiting that weakness that they had

1 such that they weren't really, truly free agents.

2 THE COURT: Well, I will focus it more specifically,
3 because I understand the general argument. Apart from it being
4 against public policy, if I represented by this as an argument
5 about rescinding a contract this person received \$200 to
6 provide certain documents, would I be required on this record
7 to rescind that, and, again, putting to one side the question
8 of public policy, which is a different issue?

9 MR. PIROZZOLO: Well, as to the public policy issue, I
10 think that is the issue.

11 THE COURT: It may be, but it does not directly
12 address the question of how the guideline applies. It may,
13 again, as many things are, be applicable for purposes of 3553.
14 The question here is how I do the arithmetic that the
15 Guidelines generate. So, I have got a Guideline provision, it
16 talks of "vulnerable victims," and it means unusually
17 vulnerable victims who have such an impaired capacity that they
18 could not detect or prevent a crime, and do I not find that, at
19 least now, in any of the materials with respect to these
20 people. At the risk of using too glib a statement, these are
21 just poor souls who are prepared to sell things that other
22 people would probably hold dear for relatively modest amounts,
23 but that does not necessarily mean that they are unusually
24 vulnerable in the language of the guideline.

25 MR. PIROZZOLO: Well, in the context of the vulnerable

1 victim guideline, I think there are a couple of concepts that,
2 by analogy, I think would apply here. The first is -- I start
3 with the proposition that if Mr. Bulger and Ms. Greig had
4 approached someone who had, for instance, a Down Syndrome or
5 some form of physical or mental impairment, I do not think that
6 there would be much argument that even though under those
7 circumstances somebody with that kind of impairment was turning
8 over -- was tricked into turning over an ID in order to get
9 money. There would be no question that that would be someone
10 who would be considered vulnerable.

11 THE COURT: I agree with that. Basically, it is
12 *petitio principii*. You have stated the principle; that is,
13 someone lacking capacity does not have the capacity to engage
14 in the exchange. The question is whether or not *these* people
15 fall in that category.

16 MR. PIROZZOLO: Well, in the case of NS, for example,
17 I think if you looked at the video it's evident that she is --
18 it's an issue of degree. It's clearly an issue of degree.

19 THE COURT: I interrupt you, and you will clarify for
20 me, but that is a video at a later date, right? When did the
21 exchange take place?

22 MR. PIROZZOLO: On the record it's not clear, it's
23 unknown, in part because, as the evidence shows, she was in a
24 very serious accident.

25 THE COURT: Right. After the transaction, right?

1 MR. PIROZZOLO: I don't know that the record is clear
2 whether it's before or after.

3 THE COURT: Well, what I guess I am getting to is,
4 yes, I have looked at the video, and yes I would have some
5 questions about the capacity of that person, the person I see
6 on the video making that exchange. But I am not sure that the
7 person I saw on the video is the person who made the exchange
8 because of the passage of time.

9 MR. PIROZZOLO: Well, if that is not enough, I will
10 turn to PM. You can see the letter that was submitted by her
11 that was submitted under seal yesterday.

12 THE COURT: The letter of May 16th, 2012, after she
13 came back to Massachusetts and was subject to control by state
14 authorities.

15 Again, we have homeless people, people with mental
16 issues, all of that. The question is whether or not at the
17 time one would say they did not have the capacity to make an
18 exchange and what the evidence is of that. Now, maybe
19 California is more willing to let people be deinstitutionalized
20 than elsewhere, although I think that is a problem throughout
21 the country, but I am focusing specifically on the question of
22 at the time that the exchange took place could I say that the
23 Government has satisfied me it is more likely than not that
24 these people could not -- any contracts that they made could
25 not be upheld.

1 MR. PIROZZOLO: Well, again, I guess I am really not
2 getting very far with the Court, I do not think.

3 THE COURT: Well, there is a famous line from Justice
4 Holmes during a conference saying to one of his colleagues,
5 "This will not wash," and the colleague saying, "Well, let me
6 keep scrubbing."

7 So, if you want to keep scrubbing you can, if there is
8 more laundry that you can use.

9 | (Laughter)

10 MR. PIROZZOLO: Well, I will point out some additional
11 pieces of laundry.

12 It is evident that with JWJ that Mr. Bulger knew of
13 his alcohol abuse, and I think actually it is more probable
14 than not, and of course I am not the one making the findings
15 here, but on this record when you see the pattern of conduct,
16 you start with DG and then the various IDs of the various
17 individuals, you see a pattern here.

18 THE COURT: Again, I do not disagree with that.
19 Again, though, I interrupt because I want to focus on
20 Ms. Greig, not on Mr. Bulger and *his* transactions with
21 particular individuals.

22 I understand your argument with respect to conspiracy
23 I think here, but at least for specific purposes of this
24 guideline and a couple of other guidelines, I would like to see
25 things that deal specifically with Ms. Greig.

1 MR. PIROZZOLO: So, circling back to NS. With respect
2 to the ones we have evidence of her present, NS, PM and ST, as
3 to NS, if you look at her video and the 302 that was supplied,
4 she actually has no recollection at all of any exchange, and
5 that in and of itself suggests an impairment that made it such
6 that she did not understand or does not recall how it was that
7 her identification information came into Ms. Greig's
8 possession. So, that is as to NS, which is an additional fact
9 that is relevant to her own mental impairment that would
10 support the inference that she is a vulnerable victim.

11 As to PM, understand that the image that we see by the
12 302 is that there is this woman who is walking down Venice
13 Beach tugging a suitcase with a wheel off, and she is
14 approached by Ms. Greig and Mr. Bulger. They specifically
15 targeted her and spoke to her for 45 minutes, were able to buy
16 her a piece of luggage. Under those circumstances Ms. Greig
17 must have known that this person was impaired in some way.
18 Now, if the issue is whether or not as a matter of contract law
19 that contract would be rescinded, setting aside public policy,
20 which I think is a major issue here with respect to even the
21 application of this guideline --

22 THE COURT: Well, then, everybody is a vulnerable
23 victim. Anytime someone sells their identity they become a
24 vulnerable victim under this statute if your theory is that
25 public policy bars it, so, consequently, we have to rescind all

1 of those contracts, and that is why I take it off the table,
2 because I do not think that is the law.

3 MR. PIROZZOLO: I don't think the Government's
4 position goes that far. Somebody who is in full control of
5 their faculties, who decides, yes, I am going to sell my
6 driver's license, that would not be a vulnerable victim, and
7 that is not the Government's position. But where you have
8 people who --

9 THE COURT: But that would be against public policy.
10 That is why I take public policy off the table for these
11 purposes. Of course, we are talking about the literal language
12 of the *Guidelines*, which captures some things and do not
13 capture other things.

14 MR. PIROZZOLO: And then as to ST -- although it is in
15 the record, your Honor, I am not sure that I am going to be
16 able to articulate anything that is not in the various 302s.

17 THE COURT: This is the opportunity to focus me on
18 things that you think are going to be compelling on this.

19 MR. PIROZZOLO: Again, with respect to ST, it is
20 evident that what he described was he was again targeted by
21 both Mr. Bulger and Ms. Greig at the time. They were sitting
22 on a park bench. He was walking past them while they sat on a
23 park bench in Santa Monica, and they asked him about turning
24 over the ID, and at the time you will see from the 302 that it
25 was clear to them that he was doing that because they asked him

1 specifically about drunk-driving convictions. He told them
2 after he sold the ID that he was going to go get a drink. I
3 start with the proposition that someone compromised by alcohol,
4 someone compromised by drug abuse is somehow compromised or
5 impaired in some way.

6 Now, it's the Government's position that with respect
7 to that, ST, which she clearly knew, she clearly knew based on
8 that 302 that he had been impaired by alcohol.

9 PM, I don't know that the record is quite clear as to
10 precisely the degree of the mental illness she was aware of,
11 but it was evidently quite a sight sufficient that they
12 approached her and for the purchase of a suitcase were able to
13 persuade her to turn over her ID.

14 And then NS, I think based on the submissions
15 obviously she is impaired and she had been, by the way -- the
16 record shows that she had been an alcoholic for years and years
17 and years and years before any time, before any conceivable
18 time that they had approached her or somehow had obtained that
19 identifying information.

20 So, with respect to the alcohol and mental illness
21 they were compromised in some way, and they knew that they were
22 compromised in order to approach them to obtain those IDs. I
23 can say it no more clearly than that.

24 THE COURT: I do not disagree with the
25 characterization, but I am dealing with a specific guideline

1 that has specific language to it, and we are talking about
2 unusually vulnerable, meaning people who have an impaired
3 capacity to detect and prevent crime. While it is close for
4 purposes of the guideline calculation, I am going to overrule
5 the Government's objection as to this one, because I do not
6 think that it has been made out in the context of the
7 *Guidelines* themselves.

8 Now, that having been said, that does not make it
9 irrelevant to calculation of the proper sentence, but it does
10 make it not material for the guideline calculation.

11 So, then I turn to Obstruction of Justice, and you
12 alluded to it, and I think it is important to deal with the
13 issue of vicarious responsibility in sentencing.

14 The law of sentencing is not quite the same as the
15 substantive law in the sense that there are several different
16 levels of vicarious responsibility: conspiracy, aider and
17 abettor and Pinkerton liability. But for sentencing the
18 touchstone is reasonable foreseeability, and that, it seems to
19 me, changes the calculation a bit. If you disagree with it, of
20 course I would like to hear that.

21 I am sad to relate that I dealt with this now 20 years
22 ago in a case before the First Circuit when I was sitting by
23 designation called United States versus O'Campo and had to
24 tease out those kinds of distinctions. But the distinction is
25 basically this: Is it reasonably foreseeable? Because the

1 sentencing issue is one of personal responsibility. There can
2 be vicarious relations, but it is not the same as conspiracy
3 where a conspirator who enters into a conspiracy is chargeable,
4 for purposes of the conspiracy is chargeable with all the acts
5 of the conspirators even before they enter into the conspiracy.
6 In the Pinkerton setting, even if it was not reasonably
7 foreseeable that somebody was going to do something who was a
8 co-conspirator, you are nevertheless chargeable with it.

9 But that is different in sentencing, and so, as I see
10 the obstruction of justice issue, it is twofold. One is that
11 co-conspirators engaged in and were convicted of perjury and
12 Obstruction of Justice, Ms. McCusker, for example, and I guess
13 I have to find that that perjury and obstruction of justice, as
14 they were charged and convicted, was something that was
15 reasonably foreseeable to Ms. Greig.

16 The second is a series of acts that are said to be
17 false statements, I guess, although I think the measure that I
18 would take of it is could they fairly be prosecuted as perjury
19 to ensure that there is a certain rigor to evaluation of
20 whether or not this was truly false in a culpable sort of way.

21 So, with that outline, I guess, Mr. Pirozzolo, you can
22 address the issues. If you want to expand on the legal
23 framework that I provided, obviously you can do that too.

24 MR. PIROZZOLO: I am going to defer to Mr. Herbert,
25 who will address the obstruction.

1 MR. HERBERT: Yes, your Honor.

2 Taking them in order, then, first of all, with the
3 vicarious responsibility, the Court's correct, that under 1B1.3
4 there are two things we would need to show. One is was the
5 conduct of these other individuals, such as the defendant's
6 sister and her close friend, part of a jointly undertaken
7 criminal activity? In our argument it is the harboring
8 conspiracy. And, secondly, was it reasonably foreseeable to
9 the defendant?

10 THE COURT: In its precise form, I think, that is to
11 say, was there an agreement that they would engage in perjury?

12 MR. HERBERT: Well, that's framing it more narrowly
13 for sure.

14 THE COURT: It is.

15 MR. HERBERT: I don't believe that the Government
16 would need to show that there was a specific agreement that
17 they would commit perjury. I think it would be enough for the
18 Government to show that it was part of the conspiratorial
19 agreement that individuals trying to hide or conceal the
20 location of Bulger and the defendant would lie to authorities.

21 THE COURT: Well, let us take it a step further, then.
22 I guess we will get to this in a moment, but is it part of the
23 agreement that those who attempt to take Mr. Bulger into
24 custody would use firearms?

25 MR. HERBERT: That those who would attempt to arrest

1 him would use firearms?

2 THE COURT: That Mr. Bulger would use firearms or
3 someone else in the conspiracy, if he were taken into custody
4 or attempted to be taken into custody.

5 Here is the issue, and it is a foreseeability issue in
6 a larger sense, that is, the zone that is foreseeable for
7 particular individuals who are caught up in a conspiracy.
8 Would they, can they be said to say, "I know if my sister ever
9 gets herself into the grand jury she is going to lie," and that
10 is part of the deal, or "I know if something untoward happens"
11 -- we'll get to it with firearms -- "if something untoward
12 happens Mr. Bulger is going to use that firearm on some law
13 enforcement personnel or someone who could otherwise threaten
14 his continued fugitive status"? And that applies specifically
15 to Ms. Greig, not to Mr. Weeks or others of the
16 co-conspirators, potential co-conspirators in this case.

17 MR. HERBERT: Yes, your Honor, and I think it has to
18 be obviously viewed in the context of all of the evidence in
19 this very unusual harboring case. At the time the defendant
20 made the decision to leave Boston and go become a fugitive with
21 Mr. Bulger, she knew already that he was one of the most sought
22 after, one of the most wanted individuals certainly in this
23 area. She knew that this was an extremely high-profile case.
24 She knew that there would be extraordinary law enforcement
25 efforts made to try to capture him. She also knew that there

1 would have to be certain steps that would be taken to keep them
2 as fugitives.

3 Magistrate Judge Boal in her detention order found as
4 fact that when the defendant left she took her sister's license
5 with her. She left to travel the country with Mr. Bulger in an
6 automobile. You can easily imagine that one purpose of taking
7 her sister's license would be to show that -- this is her twin
8 sister -- would be to show it to any trooper that stops them on
9 the highway. And that would be a lie to law enforcement in
10 order to conceal her identity. I think it would also be
11 certainly foreseeable if they were going to --

12 THE COURT: That is a little bit different from
13 perjury, and that is what Ms. McCusker was charged with here.
14 I am using her as the example, just because the close
15 relationship probably makes it the best case for vicarious
16 responsibility. Unless the Government argues otherwise, but
17 even if the Government does argue otherwise, I think it is
18 probably not obstruction of justice to use somebody else's
19 license.

20 MR. HERBERT: I would dispute that, your Honor. That
21 would be certainly a false statement to a law enforcement
22 officer. It may not rise to the level of obstruction of
23 justice if there were not an underlying investigation that you
24 were aware of. So, if you or I were stopped for speeding and
25 we gave someone else's license, that may not be obstruction of

1 justice. It would be a false statement to law enforcement.

2 And I would note in I believe it's the Restrepo case that we
3 cited this was in the context of the defendant's own lies to
4 Pretrial Services.

5 THE COURT: Right.

6 MR. HERBERT: The First Circuit has held that lying to
7 Pretrial Services about your identity after being arrested is
8 enough to qualify for the obstruction of justice enhancement.

9 THE COURT: That is the second level of this
10 discussion. I am dealing now just with --

11 MR. HERBERT: Correct. But I'm applying that to the
12 Court's question as to whether merely lying to or giving up
13 your sister's license to a state trooper who stops you would be
14 enough to qualify as obstruction of justice; would that be
15 within the conspiratorial agreement that if we are going to
16 remain on the lam we are going to have to lie and be prepared
17 to lie to authorities who would otherwise lead to our
18 apprehension? We would say in the context of this --

19 THE COURT: Let me pause on that, just because it was
20 not clear from the papers that you were saying that the
21 obstruction of justice consisted of using her sister's license.

22 MR. HERBERT: We did not cite that as a particular
23 example. I am raising that now simply as a way of saying I
24 think that we do not have to show actual perjury, a false
25 statement under oath, in order to qualify for the obstruction

1 enhancement.

2 THE COURT: I think that is right. The issue -- and
3 maybe we are going back and forth between the two branches of
4 the argument, but I want to break those branches apart, at
5 least for analytical purposes -- is how does she get charged
6 with the obstruction or perjury of others? And it has to be
7 fairly closely tied to what she is aware people will do under
8 those circumstances.

9 MR. HERBERT: Sure. And I think it is simply drawn
10 from the context of her flight, knowing who Bulger was, how
11 sought after he was, knowing that someone that high profile who
12 intended to disappear for good, which was obviously his
13 intention, would need the help of others, and that network of
14 others back in Boston would have to be prepared to lie to the
15 authorities. She knew people were going to come looking for
16 them. The State Police went to visit her the night of Flemmi's
17 arrest. So, she knew there would be immediate and intensive
18 efforts to find people.

19 THE COURT: But I look at that, and it is identified
20 in the materials, and she declined -- maybe that is a gentle
21 way of describing her response to those who showed up -- and
22 asked for consent to search. On the other hand, they did not
23 have a search warrant.

24 MR. HERBERT: No.

25 THE COURT: So, people are entitled to make their own

1 judgments about whether or not they are going to cooperate.

2 Non-cooperation is not obstruction.

3 MR. HERBERT: And I am not arguing that it is, your
4 Honor. I am not saying *that* was an act of obstruction. I am
5 saying that was direct personal knowledge by the defendant that
6 there would be immediate aggressive efforts to try to locate
7 Bulger, so that if they were in contact with people back in
8 Boston once they were on the road, such as her sister, such as
9 Kathleen McDonough, such as one or more of Mr. Bulger's
10 brothers, these were people how were going to be asked, "Have
11 you been in contact with Bulger or your sister?" And they
12 would have to lie in order for Bulger and Greig to remain --

13 THE COURT: Would they have to?

14 MR. HERBERT: I am looking at that time from --

15 THE COURT: We are dealing with real legal issues. A
16 properly defendant potential witness under these circumstances
17 could decline to testify, requiring the Government to immunize
18 them. Now, that is a rather sophisticated chain to establish
19 foreseeability by someone whose training is not in the legal
20 field.

21 MR. HERBERT: That's true, and if she were on the lam
22 on her own, it would be a different story. She was,
23 nevertheless, a fugitive with Mr. Bulger who had extensive
24 experience with the legal system and would certainly --

25 THE COURT: See, that is the attribution issue that I

1 guess I am getting to, whether or not he was providing seminars
2 on the effect of the immunization process and other aspects of
3 investigation to Ms. Greig.

4 MR. HERBERT: Seminars, no, but enough background to
5 say the Government's not going to take "Five" for an answer?
6 Yes, I would say they are going to be asking relatives, they
7 are going to be giving them grand jury subpoenas. Sure, they
8 can invoke their Fifth Amendment privileges. The Government's
9 not going to stop with that.

10 But Bulger had sat through a lengthy investigation of
11 his own criminal enterprise that it led to the indictments in
12 that case.

13 THE COURT: The question is whether he communicated
14 that to Ms. Greig.

15 MR. HERBERT: It is an inference, but I would submit
16 that it's a very strong inference that he did it.

17 THE COURT: Now, let us turn to the question of her
18 own direct obstruction as the Government sees it.

19 MR. HERBERT: Yes, your Honor.

20 THE COURT: I guess here it is, "When did you get to
21 California?", one of them. That seems to me to be kind of
22 thin. "Did you leave the country?" "No, we went to Mexico
23 from Southern California." If it had been Ireland that is
24 another matter. I am not sure that they rise to the level of
25 significance. Is there something that is truly significant

1 that one could say under the pressures of being interviewed, as
2 I understand the circumstances, immediately after arrest this
3 was an effort, however foolish, to try to mislead?

4 MR. HERBERT: Yes, your Honor, and I would like to
5 come back to those, but let's start with what I think is the
6 most significant, which is telling Pretrial Services that she
7 doesn't have any assets in her name. Sure, you can say that
8 was a statement that was made in California under the pressure
9 of the immediate arrest, but it's --

10 THE COURT: Let me interrupt you by asking a factual
11 question about the assets that the Government says she has.
12 She has the checking account.

13 MR. HERBERT: Yes.

14 THE COURT: That is being administered by Ms. McCusker
15 during this entire period?

16 MR. HERBERT: As of July 9th of 2011, two days before
17 the detention hearing began, when the defendant gave
18 Ms. McCusker a power of attorney.

19 THE COURT: But the misstatement is to Pretrial
20 Services; is that right?

21 MR. HERBERT: Originally in California, correct.

22 THE COURT: Right. But that is the one you are
23 relying on?

24 MR. HERBERT: Yes.

25 THE COURT: What I guess I am trying to get at is what

1 access, if any, did she have, directly or indirectly, to that
2 bank account during the time period that she was absconding
3 with Mr. Bulger?

4 MR. HERBERT: It was still under her name during the
5 time that she was absconding with Mr. Bulger.

6 THE COURT: Was there any activity in it?

7 MR. HERBERT: Not that we are aware of while she was a
8 fugitive.

9 THE COURT: Now, let me turn to the question of the
10 house, her house or her condominium, the Quincy property. Who
11 was administering it and how was it being administered? Were
12 they paying for the taxes, were they paying for other upkeep
13 kinds of things?

14 MR. HERBERT: Yes.

15 THE COURT: And who decided whether or not there was a
16 tenant?

17 MR. HERBERT: The defendant's sister, Ms. McCusker,
18 was in charge of administering that house. The defendant's
19 close friend, Ms. McDonough, and later Kathleen Arloskus (ph)
20 lived in that house for a period of time and was essentially
21 the person on site that would be responsible for that.

22 THE COURT: But after she left what was --

23 MR. HERBERT: It then went to other tenants, other
24 individuals.

25 THE COURT: Third parties, not affiliates, as far as

1 you know?

2 MR. HERBERT: Affiliates at least in one case. I
3 believe there was a relative who was living there for a period
4 of time, and then I believe two third parties.

5 THE COURT: Now, turning to the South Boston property.

6 MR. HERBERT: Yes.

7 THE COURT: During this time period there were certain
8 changes in beneficial ownership, I guess is the best way to
9 describe it.

10 MR. HERBERT: Yes.

11 THE COURT: Was there any action on Ms. Greig's part
12 to focus on that, that she was participating in it, agreeing to
13 it, signing a disclaimer, that kind of thing?

14 MR. HERBERT: Not until after her arrest, at which
15 point, as the Court's aware, she signed over her proportionate
16 interest in it to Ms. McCusker for a dollar.

17 THE COURT: So, insofar as the assets are concerned,
18 these were assets that were left in Massachusetts, as they had
19 to be, to which she had no access during that time period, as
20 far as you know?

21 MR. HERBERT: No, I would not agree with that, your
22 Honor. I would say she had as much access while she was a
23 fugitive to a house that's in her name, a bank account that's
24 in her name. She could pick up the phone. She would be taking
25 a risk by doing that, but she could pick up the phone and

1 withdraw the funds from that account.

2 THE COURT: The question, because this is inference as
3 well, is whether or not she was exercising some kind of control
4 over that or knew that she could continue to exercise control
5 over it.

6 MR. HERBERT: There is absolutely no reason to
7 conclude that she did not know that she could exercise control
8 over assets in her name that she left behind in Boston in the
9 care of her sister. She remained in contact with her sister
10 for a period of time. We don't have evidence that she
11 continued to remain in contact with her after her sister was
12 convicted, but I think, again, it is a reasonable inference
13 that she did. Her sister has denied that and I think she has
14 denied it. Nevertheless, if the defendant needed that money
15 she certainly would have had access to it from where she was.

16 THE COURT: So, in her interview with Pretrial
17 Services she denied that she had any assets?

18 MR. HERBERT: Correct.

19 THE COURT: That is what you consider to be the
20 strongest one? I know you want to move back to the others.

21 MR. HERBERT: Well, yes, your Honor. And I guess I
22 would not limit it to the mere statement initially to Pretrial
23 Services in California, because I think you have to take into
24 account when you talk about whether she tried to obstruct
25 justice in connection with this case the fact that that lie,

1 which might have been given under the pressures of an immediate
2 arrest, persisted throughout the detention proceedings to the
3 point where let's say two days before the detention hearing she
4 is giving a power of attorney to her sister on an undisclosed
5 bank account that has \$135,000 in it.

6 THE COURT: Let me pause with that, because this is a
7 highly technical issue, I think. She makes a statement to
8 Pretrial Services in California immediately upon arrest. Was
9 there any other point at which she had a duty to disclose in
10 the form of responding to the Magistrate Judge's statements in
11 some fashion in which she continued to contend that she did not
12 have any assets?

13 MR. HERBERT: If the Court is defining a "duty to
14 disclose" merely as a duty to respond to a direct question
15 about that, then I don't know.

16 THE COURT: But isn't that the measure, that is, once
17 somebody makes a statement, call it improvident for present
18 purposes, when they find that it was improvident and
19 inappropriate do they have a duty to disclose that except on
20 the next occasion on which they are asked the specific
21 question?

22 MR. HERBERT: Oh, I would say absolutely, your Honor.
23 If I, essentially, tell something to Pretrial Services on a
24 material issue such as my assets and I wake up the next day and
25 say, What was I thinking of? and I am persisting in trying to

1 get bail based in part on financial conditions, I would say
2 absolutely you have an obligation to come forward and correct
3 the misstatement. Otherwise, it is persisting in the false
4 statement.

5 THE COURT: That is why I ask it as a question of duty
6 to disclose. Assume that they make the false statement, the
7 decision is made, whatever the decision is made, and they do
8 not seek to correct it. Then there comes another decision
9 point at which point they do correct it, or perhaps they do
10 not. But, in any event, I am saying they do. Have they
11 engaged in more than the first initial failure properly to
12 apprise Pretrial Services of the full scope of their assets?

13 MR. HERBERT: I view it as a continuing false
14 statement to Pretrial Services as long as that issue is
15 material. I do not have a case that says that, but I would say
16 it would be akin to a perjury situation in which the defendant
17 gives a false statement under oath and then does not recant.

18 THE COURT: Well, but then you focus on the false
19 statement at the time that the false statement was made, and
20 that is why I am focusing on this. Isn't this the concern
21 being the false statement at the time it was actually made,
22 which is a circumstance in which I think it would be unlikely
23 that a perjury prosecution would be brought because of the
24 distress that someone is under and lack of recollection that
25 might be understood under those circumstances?

1 MR. HERBERT: Well, I'm not sure I would accept the
2 Court's characterization that the defendant would have a duress
3 or impaired-capacity defense to a charge of a false statement
4 to the Court under those circumstances or perjury.
5 Nevertheless, I do think obstruction of justice broader, and I
6 do think when the defendant for whatever reason initially
7 claims not to have anything and then is engaging in a course of
8 conduct to place assets that she certainly is aware of at the
9 time she is giving a power of attorney to her sister and
10 transferring her interest in the South Boston home to her
11 sister and having her sister go and clean out the bank account,
12 at the time all that is going on, I think the obstruction of
13 justice enhancement under the *Guidelines* would certainly
14 contemplate that ongoing course of conduct that flows from the
15 initial uncorrected false statement to Probation. It certainly
16 was material to the detention proceedings.

17 THE COURT: Let me turn back, because I want to be
18 sure I have understood the full extent of what you are arguing.
19 Are you arguing that because someone is engaged in harboring
20 that they are necessarily engaged in obstruction of justice
21 and, consequently, this should be included?

22 MR. HERBERT: Absolutely not, no. That would be
23 double counting.

24 So, just to briefly touch on the other false
25 statements -- and I take the Court's point. Certain things

1 like, Did we get to California in 2005 or 2006, at first glance
2 it looks like it's not a big deal. When you take into
3 consideration, however, what they were doing during 2005 and
4 much of 2006, it becomes more of a big deal in terms of the
5 detention decision, because during that time --

6 THE COURT: Do you mean 2005 and 2006 or 1995 and
7 1996?

8 MR. HERBERT: I am the one with impaired capacity.

9 THE COURT: I do not mean to turn it on you, but that
10 may tell the point, doesn't it? Do people remember with that
11 kind of precision when they are confronted with numbers of
12 where was I in 1995 and 1996? That is why I say it is a kind
13 of *de minimis* problem, that even the prosecutor who is speaking
14 directly to a court would make a mistake like that.

15 MR. HERBERT: If that were the standard, I wouldn't be
16 able to get up in any proceeding in this courthouse.

17 THE COURT: None of us would, but the point is we are
18 charging someone with that responsibility.

19 MR. HERBERT: And I'm not making light of it. The
20 fact of the matter is, yes, your Honor, can she be expected to
21 remember the fact that she traveled the country with James
22 Bulger in 1995 and 1996 living in different locations, making
23 contacts in those locations, living under different names?

24 THE COURT: But it is the specific date.

25 MR. HERBERT: And that is why I'm saying the specific

1 date by itself, if you pluck that out in a vacuum, maybe that
2 doesn't make that much of a difference, but if what you are
3 suggesting to Pretrial Services is, "We went straight from
4 Boston to California and set up residence there," as
5 Mr. Reddington said, "hiding in plain sight," that paints a
6 very different picture than somebody who has had two years of
7 practicing living in other locations. So, if you give me a
8 couple of steps toward the door, I'm somebody who actually has
9 some practice at living in different locations.

10 THE COURT: But was she asked? Did she misrepresent
11 about the kind of stopping in New Orleans or Louisiana,
12 Chicago? Did she misrepresent about that?

13 MR. HERBERT: The only direct misrepresentation along
14 those lines is, "I've never been out of the country." I think
15 if you are arrested in Southern California and you are saying,
16 "I've never been out of the country," which includes, "I've
17 never been to Mexico to get medication under these
18 circumstances," which means, "I've got to be able to get over
19 there," I would say that's a material misrepresentation, not
20 *de minimis*.

21 But, yeah, I think saying to Pretrial Services, "We
22 have been living in California since we moved here in 1995," is
23 a material misstatement under those circumstances. I don't
24 think it's as strong as the financial misstatements, but I
25 think it's material.

1 I think her statement that she hadn't spoken to any of
2 her family members or friends in over 17 years may come closer
3 to what the Court is saying in terms of can you really be
4 expected to keep track of how many years? More than 17 years
5 would have put her back in the middle of 1994. That is
6 probably not what she was literally suggesting, but I do think
7 that that time period, I think if you can come up with 17
8 years, you could probably come up with when you actually did
9 flee with him. And to suggest you hadn't been in touch with
10 family members when you have been under circumstances that were
11 specifically designed to evade law enforcement surveillance is
12 again a material misstatement.

13 The other ones we mentioned were her saying that her
14 form of ID in Santa Monica was an AARP card. Obviously, it
15 went substantially beyond that.

16 THE COURT: I do not mean to be trying to create
17 strained hypotheticals, but I am trying to understand how an
18 ordinary person might respond under these circumstances. You
19 are asked, "Do you have a credit card?", and you pick the
20 salient one, even if you have eight of them. It is that kind
21 of thing that I think should not be assimilated into
22 obstruction of justice too easily.

23 MR. HERBERT: And I think if that were all we had I
24 think that I might have to agree with the Court on that one,
25 but I do think you can take into account the fact that it was

1 not just one false or seriously misleading statement or
2 omission, it was a series of them.

3 Finally, denying knowledge of the firearms in the
4 apartment. That will be addressed separately, but I think
5 that, again, we have strong argument that she had to have known
6 about the firearms in the apartment, and to deny knowledge of
7 them in the context of a bail proceeding is a material
8 misstatement.

9 THE COURT: All right.

10 I am going to put off resolving this one until I get
11 to the firearm one as well, because the Government presses
12 that, and I want to take it up in its full context.

13 So, putting to one side the firearm issue,
14 Mr. Reddington, is there anything you want to say about this?

15 MR. REDDINGTON: Yes, your Honor. I think it would be
16 important for me to note that since Catherine has been involved
17 in the system in Massachusetts I have certainly been at her
18 side and involved myself.

19 What I think is important to understand is that, as
20 your Honor pointed out, she was pretty much in shock dealing
21 with the law enforcement authorities. There had been such a
22 significant period of time, and as I think your Honor knows, or
23 maybe doesn't know, that while she was out in California her
24 mother passed away. She didn't even know about it, didn't go
25 to the funeral.

1 THE COURT: I do not mean to minimize that, but is
2 that material to the -- is that something that happened that
3 she was aware of and, consequently, threw her off pace?

4 MR. REDDINGTON: Oh, no, no, no. The point that I'm
5 getting at is in reference to the Government's suggestion that
6 she lies and lies and lies to Probation and Pretrial Services.
7 What's important for your Honor to realize is when she was in
8 California she did not know or believe or understand that she
9 even owned property or had money in an account. It was gone.
10 When she got to Massachusetts they talk about in a sinister
11 sense that she signed over for a dollar her interest in the
12 real estate. That was because we needed to have a clear title
13 at the time of the bail hearing, and Attorney Lane, the family
14 attorney, prepared the documents based on the recommendation --

15 THE COURT: But the argument, as I understand
16 Mr. Herbert is making, is how could she not know that she had a
17 house in Quincy? Put to one side how the family was claiming
18 or disclaiming interests in the South Boston house. How could
19 she not know that she had a bank account of over \$100,000 when
20 she left? The assumption is it disappeared into thin air.

21 MR. REDDINGTON: If I can respond, for example, on the
22 bank account, your Honor?

23 THE COURT: Sure.

24 MR. REDDINGTON: That was another issue that was not
25 even known by any of us until Attorney Lane was given a letter

1 or a document from a bank because his client was advised of a
2 bank that there was an old account. They assumed that it had
3 been closed up.

4 THE COURT: We are not talking about a five-dollar
5 escheat. We are talking about \$100,000. The issue is how
6 someone could not know that they had when they left more than
7 \$100,000 in the bank and then tell Pretrial Services, "I have
8 no assets," or know that they had free title, clear title to
9 property in Quincy when they left and not identify that in
10 talking to Pretrial?

11 MR. REDDINGTON: As I say, your Honor, the point is
12 that it had been such a significant passage of time with no
13 contact, she in her mind was not of an opinion that she owned
14 the real estate or had the bank account when she's dealing with
15 Pretrial Services. This is not a situation where it would even
16 impact. In other words, you tell Pretrial Services, "Yeah, I
17 have a house in Quincy." It's there, it's a house, it's pretty
18 apparent. There's no benefit or nothing for her to be gained
19 by saying, "I don't own anything." In her mind she owned
20 nothing when she was talking to Pretrial Services.

21 THE COURT: There are a variety of ways that that has
22 an impact. It gets developed more fully at bail, but it
23 affects questions of whether or not you have counsel appointed
24 for you. It also affects the likelihood to flee, that is, you
25 have got a house and, nevertheless, you leave. Those are all

1 things that are material I think for a judge making a
2 determination with respect to an initial appearance that one
3 would expect someone to recall. That 17 years passed and she
4 forgot she had \$100,000 and she forgot she had a house, that is
5 a little bit difficult to accept.

6 MR. REDDINGTON: Can I just suggest to the Court that,
7 hypothetically, if she knew that she had \$100,000, I would
8 suggest the inference might be that maybe that account would
9 have been drawn on or there would have been some activity on it
10 rather than --

11 THE COURT: By whom? It is her account. The point is
12 that she had to give a power of attorney to Ms. McCusker when
13 she got back here. Not to get into the specifics of how people
14 access accounts, but there is no reason to believe, unless
15 there were communications between her and Ms. McCusker or
16 others who were close enough to be able to access an account,
17 which implicates a separate issue of misrepresentation, that
18 she thought the account was exhausted. The answer has to be --
19 I am not giving you the answer that you have got to give me to
20 make me satisfied, but the answer has to be, "I just clean
21 forgot it."

22 MR. REDDINGTON: That's the truth, your Honor. That's
23 the answer. It's not a situation where there is
24 misrepresentation that would even be -- I understand what you
25 are saying about in initial appearance and the issue of bail.

1 These are things that would have helped her. In other words,
2 "Yeah, I have property." The converse argument would be,
3 "Yeah, well, you took off even though you had property."

4 My position, your Honor, and what I am suggesting to
5 you is the fact that that account had literally no activity for
6 all of those years until Attorney Lane was advised by the bank
7 that there was an account with a lien on it. Nobody even knew
8 that that account existed. Attorney Lane wrote the letters to
9 the bank. Attorney Lane was the one that dealt with the bank
10 and was able to uncover this account, and your Honor knows the
11 rest of the history from there in our dealings with the
12 U.S. Attorney's Office and coming before the Court.

13 THE COURT: Well, I think I understand those
14 arguments.

15 MR. REDDINGTON: And I did want you to know that the
16 issue of the signing off of the real estate for a dollar was
17 based upon the title search that was done to present good
18 title. Should Magistrate Boal have decided that release was
19 appropriate I had to make sure that I had the title
20 certification, and Attorney Reed, who did the title search,
21 recommended that she sign -- I don't even know what it is.
22 It's real estate. I don't do real estate.

23 THE COURT: I am less likely to be influenced by that
24 for this purpose, the question of whether, if it comes to that,
25 there is an interest in that property that she maintains.

1 Expectancies and that sort of thing, which is what she had when
2 she left anyway, are not going to influence me, I think, on
3 this one. What is going to influence me or is important to me
4 is misrepresentation with respect to the house, with respect to
5 the account. You have given me your answer, and I understand
6 it.

7 Then the question of communications with friends and
8 family while she was at large outside of Massachusetts. It is
9 pretty clear she had those communications, isn't it?

10 MR. REDDINGTON: Based on the sister's conviction and
11 her friend's conviction sometime prior I think the inference is
12 obviously there. But as far as the years, the significant
13 passage of time, as I say, they didn't know when her mother
14 died. There was no contact between the sister or anybody for
15 that significant period of time.

16 THE COURT: At that point.

17 MR. REDDINGTON: Yes.

18 THE COURT: Now, I want to go back to the first branch
19 of this discussion, which is the question of attribution of
20 obstruction and perjury to Ms. Greig by other persons, her
21 sister, using her sister as the example.

22 She is in a conspiracy. The conspiracy is to cover up
23 where Mr. Bulger is. The question is, is it reasonably
24 foreseeable that others in this conspiracy are going to engage
25 in specific acts of obstruction of justice and perjury, and why

1 shouldn't I say that they would, as Mr. Herbert argues?

2 MR. REDDINGTON: I think that counsel's argument is
3 obviously speculative. That, I don't think, rises to the level
4 of evidence that the Court would need to apply an enhancement
5 for obstruction of justice.

6 In other words, Attorney Herbert suggests that, well,
7 it's her sister. Based on the fact that it's her sister, she
8 loves her sister, the inference is her sister is not going to
9 say anything that's going to get her in trouble, so, therefore,
10 it's reasonably foreseeable that the sister would take the
11 Fifth, then get immunity and then perjure herself before the
12 grand jury. It's just as likely that perhaps her sister would
13 not have answered a question and maybe taken a contempt order.
14 It's just as likely that the sister may not have cooperated or
15 perhaps the sister would have cooperated. It's very
16 speculative, your Honor.

17 THE COURT: All right. I understand the argument.

18 MR. REDDINGTON: Thank you.

19 THE COURT: As I said, I want to not resolve this one
20 until I deal with the full range of the issues raised by
21 obstruction, which is one specific one, firearms.

22 Maybe I ought to just turn to firearms right now. I
23 do not know who is going to be speaking to this, but I guess,
24 Mr. Pirozzolo, the guideline talks in terms of possession, and
25 here the question is did she possess either directly or

1 constructively? That there were a large number of firearms
2 suggests to me rather clearly that she knew that there were
3 firearms there -- I will let Mr. Reddington try to talk me out
4 of that, but I think that is unlikely -- that Mr. Bulger had
5 quite a collection, and she knew it.

6 The question is whether or not she possessed; at
7 least, that is the first order of question. There are
8 questions of vicarious responsibility I understand. Here I
9 have some difficulty. Mr. Bulger does not strike me, based on
10 the evidence that I have received, as someone who welcomed the
11 opportunity to share his weapons with anyone. So, the question
12 then becomes why do I attribute them to Ms. Greig? Simply
13 because she is in the household with him?

14 MR. PIROZZOLO: So, then, focusing on the 2B1.1(b) (14)
15 enhancement, the Government would agree that it comes down to
16 an issue of constructive possession, focusing on just the
17 possession prong, and I take it from the Court's comments that
18 the Court is satisfied that she knew of the existence of the
19 firearms.

20 THE COURT: You do not have to argue with me about
21 that. Mr. Reddington may. But for your purposes, assume that
22 I am prepared to find that she knew that there were firearms,
23 and large numbers of them, in the apartment.

24 MR. PIROZZOLO: So, it comes down to her ability to
25 exercise dominion and control over the space.

1 THE COURT: Right.

2 MR. PIROZZOLO: And I think what I would like to point
3 out is a couple of things that are relevant to this. There is
4 sort of the general control over the space that she had by
5 virtue of being the one who paid the rent, which is relevant to
6 constructive possession.

7 THE COURT: Well, it is, and, again, I test the
8 proposition against less dramatic circumstances. Does every
9 spouse possess the firearms that are in her or his spouse's gun
10 closet? I do not think I would reach that conclusion, even if
11 they paid rent together. And so, I am testing this on the idea
12 of is there some evidence that Ms. Greig used firearms in the
13 past or trained in firearms or knew what various firearms were,
14 apart from the fact that they're dangerous?

15 MR. PIROZZOLO: No. The Government can't show you any
16 evidence that we have today that she held the firearms. As you
17 know, as we submitted, the fingerprints examination came back
18 with no fingerprints of use, including Mr. Bulger's,
19 incidentally, and there is no other evidence that she actually
20 handled the firearms.

21 THE COURT: Let me pause. It is not determinative,
22 but I would want your response to this. I asked the question,
23 I believe, at the time of taking the plea, noting that the Plea
24 Agreement specifically indicated that the Government would not
25 pursue firearms charges against Ms. Greig, and I recall the

1 response being that there simply was not sufficient evidence to
2 do that. Now, am I faced here with an argument that the
3 standard of proof is different, that is, if you pursue firearms
4 against Ms. Greig you are going to have to do it against a
5 standard of beyond a reasonable doubt as a criminal offense,
6 but here in sentencing you get to do it by fair preponderance?

7 MR. PIROZZOLO: Well, the standard is different.

8 THE COURT: It is, but I want to be sure that I
9 understand that the Government is asking me to do in sentencing
10 something that it was not prepared to do for purposes of the
11 charging decision because there was inadequate evidence against
12 the higher standard.

13 MR. PIROZZOLO: Well, in making the judgment with
14 respect to the plea, there is always a range of judgment as to
15 the probability of success, obviously, and in the context of
16 sentencing where the preponderance standard does apply here, it
17 is an entirely different matter.

18 THE COURT: It is, but I raise this, and I think I
19 understand the law on this. There is a different dimension to
20 it. And that is, and it is one that I have struggled with in
21 other cases in other circumstances, in which the count of
22 conviction is simply a ticket to create criminal liability
23 against a lower standard. The law permits it, I think. The
24 question for me is evaluating that fully and what its
25 implications are for purposes of sentencing.

1 I have taken the position in the past that if the
2 Government charges something and then drops it, then I will not
3 consider that for purposes of sentencing; that is, the
4 Government had a chance, they chose not to.

5 This is a different issue. The Government chose not
6 to charge in the first place for a variety of reasons, the
7 obvious one being that you would never make a gun case, I
8 think, on this evidence, and so now the question is whether or
9 not I fill in the blanks in imposing additional criminal
10 liability on someone for whom it would be impossible to do a
11 gun case, at least on this record.

12 MR. PIROZZOLO: Well, understand that we are talking
13 about the Court evaluating the appropriate sentence. We are
14 talking about a guideline that's evaluating the appropriate
15 sentence under the circumstances.

16 THE COURT: Should I take into consideration the
17 choices that the Government makes with respect to the charging
18 decision in doing that? Because it seems to me that it is an
19 incentive, not always acted on, but an incentive to the
20 Government to choose the most provable case perhaps against the
21 least demanding set of evidentiary requirements and then, once
22 before the judge, to drive that sentence up higher for things
23 that were not charged at all. I am concerned with that larger
24 issue. I am not suggesting that has happened here, but I am
25 testing it against that proposition.

1 MR. PIROZZOLO: I will answer it this way. I will try
2 to answer it. I can understand the concern about having the
3 defendant plead to one thing, the clear charge beyond a
4 reasonable doubt, and then have the Government start shoveling
5 all kinds of stuff in that it could never have proved beyond a
6 reasonable doubt in front of a jury. That's a concern.

7 My first answer to that is an institutional one, which
8 is, frankly, the Sentencing Commission and Congress ultimately
9 have made the decision that in the context of sentencing as a
10 policy matter that is an entirely appropriate way for the Court
11 to proceed. In fact, it's not just a *Sentencing Guidelines*
12 issue. 3661 does not limit the information that the Court can
13 consider in the context of sentencing. It's a different thing.
14 It's not a guilt or innocence, necessarily, standard.

15 THE COURT: I understand the larger protocols for
16 sentencing, but the difference here is constructing a
17 guideline, essentially stacking various elements of culpability
18 in a fashion that -- this sounds, and I do not mean it to, as
19 inflammatory, but an end run around the standard mechanisms by
20 which we establish culpability. Here what I have is a
21 circumstance in which she is in the house and there are lots of
22 guns. That is really what it comes down to, I think, as the
23 direct evidence, and you are inviting me to make inferences
24 which I think would never make it by clear and convincing
25 evidence. The question is whether they make it by a fair

1 preponderance.

2 MR. PIROZZOLO: Well, let me unpack that, your Honor.
3 Because with respect to constructive possession of the weapons,
4 we do make that by clear and convincing evidence, and we can
5 establish by way of her knowledge and the location of the
6 weapons, which I can address in a moment, because they weren't
7 all in one place, but the weapons were in different spots --

8 THE COURT: You just introduced, or maybe I did,
9 "clear and convincing." I don't think I did. Did I say "clear
10 and convincing"?

11 MR. PIROZZOLO: I think you said "clear and
12 convincing."

13 THE COURT: So, we have got a range of things. You
14 say, We can do more than fair preponderance, we can do clear
15 and convincing, but not beyond a reasonable doubt.

16 MR. PIROZZOLO: But let me address I think the more
17 institutional thing that you posit. What we are talking about
18 here is a guideline that provides for an incremental penalty.
19 It does not provide for the full and complete range of penalty
20 she would face if she were, for example, sentenced under the
21 firearms guideline. So, in the context of 2B1.1, which is the
22 precise legal question here, she does not face and would not
23 face the same penalty as she would face if she were tried and
24 convicted of the gun charges.

25 So, it really is not the case that it is dropping a

1 charge and then shoveling it in in the context of this
2 guideline. Rather, it is simply a marginal incremental penalty
3 in the context whereby a preponderance of the evidence if you
4 can show she had constructive possession of those weapons,
5 which I think the Government can show, that there is a marginal
6 increase in her penalty under the fraud guideline.

7 THE COURT: So, let us talk about the proof on that,
8 and at the risk of having too glibly characterized the
9 Government's proof, what else is there, apart from the fact
10 that she was in an apartment for an extended period of time
11 with someone who collected guns?

12 MR. PIROZZOLO: Well, the Government submitted a
13 notebook that was found at the scene that appears to be in her
14 handwriting. If you bear with me, I can put it up on the
15 screen or I can just refer to it, your Honor. We actually have
16 the notebook here, your Honor, if you would like to look at the
17 entire thing.

18 THE COURT: But it is included in the collection?

19 MR. PIROZZOLO: Selections are included in the binder.
20 The actual entire notebook is here, present, if the Court --

21 THE COURT: Well, I will see if I want to see it. But
22 remind me of what --

23 MR. PIROZZOLO: So, if you bear with me, your Honor, I
24 just want to put it up.

25 THE COURT: And maybe it would be a good idea to

1 simply, so that other people are able to observe it, if you
2 could put it up on the screen too.

3 MR. PIROZZOLO: I will do that, your Honor. It's
4 Exhibit 53, your Honor.

5 THE COURT: 53?

6 MR. PIROZZOLO: Yes.

7 THE COURT: And that is Volume II?

8 MR. PIROZZOLO: That I think is Binder II, your Honor.
9 Just bear with me, your Honor.

10 THE COURT: Yes.

11 MR. PIROZZOLO: So, I just put up the first page of
12 the exhibit. Actually, it's the second page of the exhibit.
13 There is Exhibit 53. The first page is a tag, like an
14 inventory tag from the FBI.

15 THE COURT: Right.

16 MR. PIROZZOLO: That is the cover of it, your Honor.
17 Do you have that in front of you?

18 THE COURT: I do.

19 MR. PIROZZOLO: I am going to first put up a page.
20 Among other things, the handwriting appears to correspond to
21 handwriting of other things, including a weekly planner that
22 Ms. Greig kept. But also, just before I get into the substance
23 of what's in that notebook that's relevant to this issue, there
24 is a page that I think makes clear that this is, in fact,
25 Ms. Greig's notebook.

1 You can see there is a page here, and I will blow it
2 up on the screen. It's a reference to cat lovers.

3 THE COURT: Right. I have been through that part of
4 it. What I am looking for is what ties her to guns.

5 MR. PIROZZOLO: Yes, your Honor. Well, as you know,
6 the evidence showed that there were weapons found in a common
7 area of the apartment behind a mirror where there had been
8 hides that were created. They'd cut through the wall --
9 somebody had cut through the wall to place the weapons in that
10 location.

11 There was another location in the apartment as well
12 where there was a hide cut through the wall. That was in a
13 bathroom that appeared to be used by Mr. Bulger. However, most
14 of the guns, 19, and the ERT report documents where they came
15 from, the guns and the weapons, most of them came from that
16 common area behind the mirror.

17 THE COURT: All of that I assume is conceded, that
18 there were large numbers of guns concealed or secreted at
19 various points in the apartment. The issue, as I said, is how
20 I attribute them in the possession, constructive possession
21 sense, to Ms. Greig.

22 MR. PIROZZOLO: So, the inference is, if you look at
23 the notebook, I put up on the screen page -- let's see. It's
24 six pages in. There is a name on the original.

25 THE COURT: Right.

1 MR. PIROZZOLO: On the sealed one there is an
2 original. I've redacted out the name that was on the top of
3 that.

4 THE COURT: Maybe I can move this along a little
5 faster. I see the reference to tools and the kinds of tools
6 that would be used to create hides or access hides, and I
7 understand that, I think. The question is does that create
8 constructive possession?

9 I will put it in a different way. In an ordinary gun
10 case, put to one side the standard, if someone was asked by
11 another to go get equipment that would be useful to hiding guns
12 would we say that they are in constructive possession of them?

13 MR. PIROZZOLO: If somebody built the hide or built
14 the gun closet or helped get the tools to build the gun closet,
15 which is what this appears to have been, if someone got the
16 tools to build the gun closet or the hide, as is the case here,
17 and that person lived in the apartment and that person paid the
18 rent on the apartment and that person paid the utilities on the
19 apartment and that person paid the cable bill on that apartment
20 and that person used the room in which at least one of the
21 hides was created, then the answer is yes.

22 THE COURT: Has there ever been a case like that?

23 MR. PIROZZOLO: I cannot cite you a case.

24 THE COURT: No, there hasn't been, because we have
25 these gun cases all the time in which we have paramours -- I

1 use women because most of the time it's men who are the
2 possessors -- who live with someone and maybe do the grocery
3 shopping and even go to Home Depot for them and they do not get
4 charged. Now, maybe that is a charging decision. I think it
5 is a charging decision based on a larger proposition, which is
6 that does not in and of itself establish constructive
7 possession.

8 The kinds of things that lead to constructive
9 possession are the ability to use the weapon in some fashion.
10 That is, I think, what I am looking for here, or asking you to
11 provide for me, because it is a little bit more strained under
12 these circumstances. That is why there are no cases on it.
13 Now, maybe there are not cases because, as I said, there are
14 charging decisions that are made that it is not the best
15 possible case to do to do the paramour because she got a
16 hacksaw for metal/plaster cutting.

17 MR. PIROZZOLO: There are other pages, your Honor,
18 that show -- there's a lock the next page over. You can see
19 lock, graphite lock, silicone, level, masking tape on walls,
20 duct tape removes paint. You can see that. Buy a caulking
21 gun, vice grip.

22 THE COURT: Right, I see all of those.

23 MR. PIROZZOLO: This is all evidence of her
24 participation in exercising dominion and control over the
25 space.

1 THE COURT: I do not mean to be too technical, but the
2 *Guidelines* themselves are technical. The person who builds the
3 cabinet is in constructive possession of what is later put in
4 the cabinet by the person who has direct possession of it?
5 That is the theory?

6 MR. PIROZZOLO: With the other indicia of control over
7 the space.

8 THE COURT: Who lives in the house? I do not mean to
9 create too many hypotheticals. But the teenage boy whose
10 father asks him as a shop project to create a cabinet -- he
11 lives in the house, knows there are lots of guns, and creates
12 the cabinet for his father -- is in constructive possession of
13 the guns that are in the cabinet?

14 MR. PIROZZOLO: To the extent -- well, I am repeating
15 myself, but to the extent that that person is exercising
16 dominion and control over the space, the answer is yes.

17 THE COURT: Yes, but that is the bottom-line
18 conclusion. The question is how do I get to that conclusion?

19 So, your position is the 15-year-old, under the
20 hypothetical I have just given to you, is someone who is in
21 constructive possession of what the father puts in the cabinet?

22 MR. PIROZZOLO: Let me add another fact, which is that
23 Mr. Bulger made a statement which is in the affidavit submitted
24 by Agent Torisney (ph). It's tab 102.

25 THE COURT: 102 is it?

1 MR. PIROZZOLO: 102, your Honor.

2 THE COURT: Go ahead.

3 MR. PIROZZOLO: Add to that in the affidavit there is
4 a paragraph --

5 THE COURT: What is the number?

6 MR. PIROZZOLO: 6P.

7 THE COURT: "P" as in "Paul"?

8 MR. PIROZZOLO: "P" as in "Paul." It says in that,
9 and I think I can read this because there's nothing in there
10 that ought to be redacted, "Bulger advised that he did discuss
11 with Catherine Greig what would happen if he, Bulger, should
12 die. Bulger told Greig that she had two options, either to
13 remain in Santa Monica and lead the same life without him or to
14 go home. The only way that she could stay in Santa Monica and
15 live the same life without him is if she knew and had the
16 ability and controlled the cash and the weapons that were with
17 the cash."

18 THE COURT: Put to one side, because I think it has to
19 be split up, we are talking about a time other than the time
20 that is relevant here, that is, after Bulger passes away.
21 Second, cash is different from guns. That is why I asked the
22 question about cash early on in this discussion. Cash is the
23 means of living. Guns or weapons are something that Mr. Bulger
24 had that apparently he could pass on if he died. That does not
25 mean that someone has constructive possession or direct

1 possession of them until he dies.

2 That is the issue here. It is during this time that
3 she was there did she have constructive possession of this, and
4 you have told me a variety of things from which inferences
5 might be drawn about this, but there is nothing more, and I am
6 asking this as a question because I have obviously gone through
7 these materials. Is there nothing more than her filling his
8 shopping list for what is necessary to a build a hide of her
9 direct involvement at that time?

10 MR. PIROZZOLO: Aside from her presence -- I feel like
11 I am repeating myself. Aside from her presence --

12 THE COURT: I am looking for something beyond what you
13 have told me so far.

14 MR. PIROZZOLO: All right. Aside from the list of
15 things that gave her control over that apartment, the fact that
16 she apparently had direct involvement in creating the hides
17 where the weapons were, in addition to the fact that the
18 weapons and the guns, most of the weapons and most of the cash
19 were all together where she clearly had license at least to the
20 cash.

21 THE COURT: Let me ask that, because that is a little
22 bit new, that is, that they were all together in the hide or
23 hides. The response that Mr. Reddington has given is that she,
24 I infer, received an allowance, it was put in a cash drawer and
25 that she used it for purposes of household necessities. Is

1 there some indication that she had broader access to the hides
2 themselves, apart from the inferences that could be drawn,
3 where the cash was?

4 Imagine this: Imagine a hypothetical of, let us say,
5 a controlling personality who has with him someone who over a
6 period of years has developed accommodations with him, and he
7 is prepared to give her some money but not all of the money,
8 and the way in which he does it is he gives her an allowance.
9 Now, I want to understand whether or not, apart from his
10 bequest in paragraph 6P, there is anything more that suggests
11 her ability to access those hides for purposes of the money
12 without his restrictions.

13 MR. PIROZZOLO: Aside from the fact that she lived in
14 the apartment, I think that she knew where the cash was, the
15 evidence shows she knew where the cash and the weapons -- I
16 will focus on the cash, where the cash was. She clearly had
17 the ability -- she must have had the ability, because
18 Mr. Bulger could have gone out, and setting aside whether he
19 had died or not, she must have had the ability, there must have
20 been, it's a reasonable inference that she must have had
21 license to take that cash if Bulger was compromised in some
22 way.

23 THE COURT: That is a contingent responsibility. I do
24 not mean to get into -- well, I suppose I do because it is
25 technical in that sense -- the law of property, which is to say

1 if a contingency occurs you have possession, rightful
2 possession.

3 But we are not dealing with that. We are dealing with
4 a circumstance in which the contingency has not occurred,
5 either his death or in some fashion being compromised. We are
6 dealing with how they lived in that place during the time that
7 she was there with him and whether or not she had possession,
8 direct or constructive, of the weapons.

9 I am analyzing access to cash as a way of
10 understanding collateral things that she might have, and I am
11 having some difficulty saying that she would have had or that
12 the Government has established that she had possession of those
13 weapons. And I go back to, because both parties have asked me
14 to infer things about Mr. Bulger and his personality that, as I
15 said, he does not seem to be someone who shared those kinds of
16 things easily with anybody.

17 MR. PIROZZOLO: Can I come at this from a different
18 angle, your Honor? If you look at item 14.

19 THE COURT: Item 14?

20 MR. PIROZZOLO: Excuse me. 2B1.1(b)(14), the
21 guideline, I just want to go back to the text of the guideline,
22 because that is what we are construing here. It says, "The
23 Offense." If the offense involved possession of a dangerous
24 weapon, including a firearm, in connection with the offense,
25 then you get the increase. The offense here is identity fraud

1 in connection with harboring and possession of IDs in excess of
2 the statutorily defined amount. So, the offense that we are
3 talking about here under the application of this guideline
4 includes -- there is no question that Mr. Bulger, no question
5 that Mr. Bulger --

6 THE COURT: Well, that is a different issue. If you
7 want to go to the question of vicarious responsibility, we
8 will. I just want to be sure that I have exhausted everything
9 that I need to know that you would like to bring to my
10 attention about the responsibility of Ms. Greig here.

11 MR. PIROZZOLO: Aside from the record of inferences
12 that I have already laid out about dominion and control over
13 the apartment, etc., it is a fact that we cannot point you to
14 any particular evidence that shows her fingerprints --

15 THE COURT: I am just asking for what it is. I will
16 make my own conclusions about whether it is successful. Now
17 the question that I think you are leading into is but she was a
18 conspirator with someone who she knew, it was reasonably
19 foreseeable that she knew that he had weapons and those weapons
20 were there for purposes of forestalling being apprehended. Is
21 that the argument, that is, reasonable foreseeability as
22 created by the conspiracy that they had?

23 MR. PIROZZOLO: Well, it's more than just reasonable
24 foreseeability. She had actual knowledge that the weapons were
25 in the apartment in connection with --

1 THE COURT: Well, the actual knowledge, subject to
2 hearing from Mr. Reddington, I have conceded that that is
3 established. So, she has actual knowledge of it. She is not
4 prepared to do it herself, use it herself, I do not think that
5 there is any evidence that she is, and so then the Government
6 is saying, okay, so we are going do it on a vicarious
7 responsibility basis, that she is part of a conspiracy that is
8 designed to protect Mr. Bulger, and I think it has to be the
9 harboring one, not the identity fraud.

10 MR. PIROZZOLO: Well, your Honor, one of the identity
11 frauds is premised on the harboring. So, the (a)(7) is, in
12 fact -- the liability flows from harboring.

13 THE COURT: In any event, I think it has to be based
14 on harboring. That is, the conspiracy, however the charging
15 works, it has to be based on the assumption of responsibility
16 vicariously through harboring rather than a pure identity
17 fraud.

18 MR. PIROZZOLO: I am not sure I understand the "rather
19 than pure identity fraud."

20 THE COURT: Yes. If it were pure identity fraud, that
21 is, she got a card, as charged in Count Three, got a card,
22 possessed it, maybe even used it, guns would not be part of
23 that, or at least it would take quite a leap to get to that.
24 That would be part of harboring.

25 MR. PIROZZOLO: Yes, your Honor.

1 THE COURT: One could say that it is conceivable that
2 a conspiracy involving harboring is going to involve taking
3 steps to avoid apprehension.

4 MR. PIROZZOLO: Yes, your Honor.

5 THE COURT: So, now we are talking about she knows
6 there exists these guns. It would be different if she didn't
7 know that there exists these guns, but I am saying that she
8 does. Is that an alternative line that you are pursuing?

9 MR. PIROZZOLO: Yes, your Honor, it is, and the
10 Guidelines permit it. When the offense conduct covers -- in
11 this case the existence or presence of those weapons had a role
12 in the conduct of harboring and the harboring conspiracy and,
13 therefore, it's chargeable to her on that basis for purposes of
14 application of this guideline.

15 THE COURT: I think I understand that one a little bit
16 more clearly. But I wanted to move, then, to the question of
17 her individual responsibility, which I find is more tenuous.

18 MR. PIROZZOLO: Just so the record is clear, it's the
19 Government's position that with respect to her individual
20 responsibility it is not as tenuous as the Court is --

21 THE COURT: I am not asking you to agree with me,
22 people, not infrequently, do not, and for purposes of
23 preserving the record, but I think those have different
24 strengths, those arguments.

25 So, Mr. Reddington.

1 MR. REDDINGTON: Yes, your Honor. Thank you.

2 First of all, I know when not to argue. I hear loud
3 and clear that your Honor has made that determination on the
4 knowledge aspect.

5 THE COURT: I am not soliciting you to engage in a
6 futile act, but it just seems to me to be incomprehensible that
7 she did not know about the guns there.

8 MR. REDDINGTON: Understood, your Honor, and I suggest
9 that this is clearly concisely the issue of the significance of
10 the evidence and whether or not the issue of possession has
11 been met for purposes of 2B1.3. This book, the notebook, has
12 been central in the Government's argument, and it's
13 interesting, if I may have the liberty, your Honor --

14 THE COURT: Yes.

15 MR. REDDINGTON: -- of using the actual exhibit?
16 Thank you.

17 THE COURT: Mr. Lovett is going to switch it over.

18 MR. REDDINGTON: If I put this under here?

19 THE COURT: Yes, that does it.

20 MR. REDDINGTON: Thank you.

21 Your Honor, first of all, if you look at the actual
22 exhibit, and --

23 THE COURT: I think maybe you want to pull it up a
24 little bit higher, just because it may compromise someone's
25 name, that is all.

1 MR. REDDINGTON: Is that all right? If you look at
2 the actual exhibit, your Honor, first of all, I have taken the
3 liberty --

4 THE COURT: Let me just stop. If you could pull it
5 off there for just a second. It is just a question of
6 redaction. This is just somebody who lived in the
7 neighborhood; is that right?

8 MR. PIROZZOLO: Yes.

9 THE COURT: So, I do not think this is a problem. The
10 question is there is an individual whose name is identified who
11 apparently was living in the neighborhood.

12 MR. REDDINGTON: I can read from it, and your Honor
13 can certainly look at it. This book is a notebook that she had
14 in a class, and if you look at the notebook -- and this is what
15 is so scary about the Government arguing inferences based upon
16 what is really innocent documentation. I am looking at the
17 notebook and I see, as we go along, she had, the first class
18 was computers, and there are dates in it and it's consecutive,
19 October 12th --

20 THE COURT: Let me cut through that a bit. Was she
21 taking a class in cutting plaster and metal?

22 MR. REDDINGTON: I am going to address that, your
23 Honor. The point I want to make is the dates continue on in a
24 consecutive fashion, so you can tell that this was not
25 something that was certainly compiled as a fraud. The next

1 class that she took was Home Repair, and it clearly sets forth
2 the name of the teacher, the fact that the home repair and
3 toilet replacement was the specific focus. And you look at it,
4 the tools that you need. It goes on and on about the tools,
5 the drill. They talk about the snips, they talk about graphite
6 and the lock as it goes on consecutively. Vice grips, wire
7 cutters, screwdriver, voltage tester, and it continues on with
8 different projects in the course that she was taking.

9 Your Honor can go on and see June 23rd: Particulate
10 masks, toothpaste-size tube of caulking material.

11 THE COURT: When you say "June 23rd," I am not seeing
12 the date.

13 MR. REDDINGTON: Okay. Do you see right there, your
14 Honor? And that's throughout that entire notebook, it goes on
15 October such and so, November, December, and then it goes up to
16 June 23rd.

17 THE COURT: I see.

18 MR. REDDINGTON: You see? And this is where it's
19 talking about the toothpaste-size tube of caulking material,
20 masking tape. And then it talks about gas, electric and turn
21 off the water valve. That's what this is about. It's lectures
22 and notes that she took on how to fix a toilet. And to have
23 the Government come in here and start to argue that this is
24 indicative of her knowledge because she is involved with the
25 hide I suggest, your Honor, would not be appropriate argument

1 or inference for this Court.

2 THE COURT: So, let us, then, turn to the question of
3 she is in the apartment, she knows there are lots of guns, she
4 knows that Mr. Bulger keeps them in various locations, and
5 while she may not herself have constructive possession of
6 those guns, she is nevertheless part of a conspiracy in which
7 it is obvious that it has both a defense policy and a war
8 policy.

9 MR. REDDINGTON: Well, I understand the Court's point.
10 Pursuant to the guideline the offense must involve possession
11 of the weapon in connection with the particular offense.

12 THE COURT: Possession by Bulger is clear, right?

13 MR. REDDINGTON: Yes.

14 THE COURT: So, is it reasonably foreseeable to her
15 that his possession could be used in connection with that
16 conspiracy?

17 MR. REDDINGTON: I understand what your Honor is
18 suggesting. I just don't see that the evidence is there for
19 purposes of the possession in connection with furtherance of
20 the offense by her, not Mr. Bulger. So, I would object to it
21 and request that the Court not add that enhancement.

22 It seems pretty clear the Government suggests that
23 they are not looking to throw everything or "shovel it in," I
24 think was the expression that was used. Well, it's pretty
25 apparent that they are. I think that clearly there is no

1 charge of the weapons, but now they seek to, under the lesser
2 standard of proof, enhance her sentence, and I just don't see
3 that the evidence is there, and it's certainly something within
4 the Court's discretion and your sound judgment as to what you
5 determine the facts to be based on the evidence. So, I would
6 ask that you not give that weapon enhancement.

7 THE COURT: Well, let me go back to the ones that deal
8 with these two, that is, the question of firearms and the
9 question of obstruction.

10 I am going to apply the firearm enhancement, not
11 because there is, from my perspective, adequate evidence by any
12 of the cognizable standards, including fair preponderance, that
13 there was constructive possession by Ms. Greig of those
14 weapons. There is nothing here that I can see that suggests
15 that she was in a position, except with the approval of
16 Mr. Bulger, and that approval does not appear anywhere in the
17 record, to make use of those weapons.

18 So, I put off the table the question of her direct
19 responsibility, but I get to the question of conspiracy and how
20 conspiracy works in the context, as I said, of sentencing and
21 within the protocol that at least I tried to articulate in
22 O'Campo 20 years ago. It is apparent to me that she knew that
23 there were lots of weapons there. It is apparent to me that
24 she would be fully knowledgeable what those weapons were for in
25 this setting, and they were for perhaps other things, but

1 certainly for preventing apprehension, that is, to continue the
2 harboring in this case. So, under those circumstances it seems
3 to me appropriate to attach the enhancement for firearms.

4 Now, I turn back to the question of obstruction of
5 justice. There is a danger with obstruction of justice that
6 everything that makes it a little bit more difficult for the
7 Government to prove a case or for courts to develop evidence
8 constitutes obstruction. I will not take that position. The
9 parties are entitled to exercise their rights, and it is
10 appropriate for parties in exercising their rights to claim to
11 provide various kinds of evidence and pursue various kinds of
12 initiatives that are authorized.

13 But that is not the issue. The issue, it seems to me,
14 is whether or not there were affirmative acts of
15 misrepresentation and at a critical time. Again, I look at the
16 critical time as one that was highly charged in which the
17 defendant would, any person would, be quite upset. That having
18 been said, however, I find critically important the
19 protestation that she did not have any property when it was
20 clear that she did and we, of course, found that out.

21 I do not mean to denigrate the argument, but it would
22 require the view that the property just disappeared into thin
23 air, and it is not just \$10 kept in a bank and forgot about, it
24 is a very substantial, six-figure bank account, and it is a
25 house with no mortgage on it. That is a misrepresentation at

1 the outset of the case to Pretrial Services. A more
2 sophisticated development with respect to how property might be
3 used unfolded in the context of the bail hearing, but that was
4 misrepresentation at the outset, and I find it to be material.

5 I am less concerned with and, frankly, would not
6 otherwise attach obstruction of justice to the year that she
7 got to California -- we all make mistakes about years -- or
8 going to Mexico from Southern California. It does not strike
9 me as so clear.

10 The question of denial of knowledge of cash and denial
11 of knowledge of firearms is material, and it seems to me that
12 that has to be included. So, on that ground I will find that
13 the obstruction enhancement is also appropriate under the
14 *Guidelines*.

15 There is a second branch, as we discussed earlier on,
16 of the obstruction enhancement. That is the branch that has to
17 do with conspiracy, and I find this to be very close. On the
18 one hand it is reasonably foreseeable that all the conspirators
19 are going to take whatever steps are necessary to further the
20 conspiracy; but some of those steps are rather specific, and
21 here attributing to Ms. Greig the acts of her sister on this
22 record seems to me to be a stretch and one I am not prepared to
23 make. I say it is close because I think it is a close
24 question, but the issue is the record itself.

25 So, for those reasons I am adding those two

1 enhancements.

2 Before taking a break, I want to take I think the last
3 issue here, which is relocation and sophisticated means. It is
4 Objection No. 10 that the Government has made to the
5 calculation made by the Probation Office.

6 While I will permit, obviously, and carefully
7 consider, Mr. Reddington, what you have to say, I have to say
8 that this is, it seems to me, one that falls pretty squarely
9 within the *Guidelines* here. It is possible to say, well, this
10 is not that sophisticated; how sophisticated is it to go to
11 people with alcohol problems and drug problems, even serially,
12 and obtain for relatively modest exchange amounts their
13 identities? But it seems to me that this is sophisticated
14 enough to justify the inclusion of that enhancement in this
15 setting.

16 I also think the relocation is appropriate here. It
17 is of the essence of this conspiracy that Ms. Greig was a part
18 of that there would be relocation until they found someplace
19 that was comfortable and protected enough to continue the
20 conspiracy to harbor and the actual harboring that she was
21 involved in.

22 So, unless there is some further argument,
23 Mr. Reddington, that you would like to make about that, I am
24 inclined to include that enhancement as well.

25 MR. REDDINGTON: Just note my objection, your Honor.

1 THE COURT: I do. And it goes without saying that the
2 parties have argued other sides of this, and their objections
3 are, of course, preserved.

4 So, let us go back, then. I think I have dealt with
5 all of the outstanding *Guidelines* issues.

6 MR. PIROZZOLO: That's correct, your Honor.

7 THE COURT: So, let us, then, recalculate these
8 *Guidelines* so that they reflect what I have actually resolved.

9 Just using paragraph 42 of the Presentence Report, I
10 am increasing that from 20 to 30. With respect to the
11 additional enhancements for the special offense
12 characteristics, I am increasing it by two. That would be I
13 think in paragraph 43 or relate to paragraph 43, although the
14 Government has asked with respect to the victims that
15 enhancement is not included.

16 Then I turn to the so-called "Group Two" calculations,
17 and here, because I found firearms, it moves to -- the specific
18 offense characteristics in paragraph 49 go up to 14. The
19 question of obstruction adds an additional two points, and so,
20 as a consequence, if I have this correctly, in Group One we
21 have an adjusted Offense Level of 32; on Group Two we have an
22 adjusted Offense Level of 22.

23 THE PROBATION OFFICER: Your Honor, I believe the
24 Court would have to impose the enhancement at the 10 first,
25 which gives you a plus two.

1 THE COURT: (b) (10), okay.

2 THE PROBATION OFFICER: And then (b) (11), which is
3 another plus two, so I get an adjusted Offense Level of 16 for
4 Group Two.

5 THE COURT: Oh, under paragraph 49?

6 THE PROBATION OFFICER: Correct. 49 would now only be
7 a plus four to bring it to 12.

8 THE COURT: Right.

9 THE PROBATION OFFICER: And (b) (10) is another plus
10 two, so then with obstruction I get 16 as an adjusted Offense
11 Level.

12 THE COURT: And then when you go through the grouping
13 calculations, we are really looking only at the 32, aren't we?

14 THE PROBATION OFFICER: Correct, your Honor. So,
15 there is one unit, which brings it to a 33.

16 THE COURT: So, turning to the way in which the
17 Guidelines work, the guideline range for this would turn out to
18 be 121 months to 151 months; is that right?

19 MR. PIROZZOLO: Your Honor, I misheard, I think. Did
20 Probation say it's to 33?

21 THE PROBATION OFFICER: It would be a 33 prior to
22 acceptance of responsibility, which I guess your Honor would
23 have to determine that.

24 THE COURT: Right. I am sorry. So, I do have to take
25 the acceptance. I assume, unless there is something else going

1 on, the Government is not arguing that there is an acceptance
2 of responsibility here?

3 MR. PIROZZOLO: No, your Honor.

4 THE COURT: So, we go down to 29.

5 MR. PIROZZOLO: For purposes of clarification, the
6 Government is not clear how we got from 32 to 33.

7 THE COURT: Let us go back to it.

8 MR. PIROZZOLO: If I might, I think there is only one
9 group, your Honor. There is no additional --

10 THE PROBATION OFFICER: Correct, your Honor. I
11 apologize. It's actually no additional points, so you stay at
12 the 32.

13 THE COURT: So, we are going from -- let me see if I
14 am capturing it correctly. We are going from 32 to 29, right?

15 THE PROBATION OFFICER: Correct, with acceptance.

16 THE COURT: And the parties agree that is the
17 arithmetic? Now, put to one side where we go with it.

18 MR. REDDINGTON: That's the arithmetic.

19 MR. PIROZZOLO: Yes.

20 THE COURT: So, that arithmetic, so it is clear, leads
21 to a guideline range of 87 to 108 months in prison, it leads to
22 a fine range of \$12,500 to \$125,000.

23 THE PROBATION OFFICER: I believe it's \$15,000, your
24 Honor, to \$150,000.

25 THE COURT: You are right, \$15,000 to \$150,000. Do we

1 have a shared set of numbers after going through this fairly
2 elaborate calculation?

3 MR. REDDINGTON: Yes.

4 THE COURT: Those are the *Guidelines*. Now, it goes
5 without saying, but I will say it again, that the *Guidelines*
6 are advisory. The Government, I believe, has asked for a
7 sentence that now would involve an upward departure or a
8 variance from the *Guidelines* in this case. So, the next step,
9 after we take a, say, 15-minute break, is to hear the
10 Government's arguments. I will hear from the persons who wish
11 to express their views here, the four that I have identified,
12 which I think are the only four here.

13 MR. PIROZZOLO: For clarification, your Honor, there
14 is an additional victim who this morning asked to speak, so
15 there would be five.

16 THE COURT: And that person is?

17 MR. PIROZZOLO: Steven Rakes.

18 THE COURT: Steven Rakes. Okay. And without testing
19 my own recollections, he would fall in that category of persons
20 I think who I would say is not entitled under the Crime
21 Victims' Act but to whom I give permission. He is no different
22 from anyone else for whom you made the argument with respect to
23 emotional distress; is that correct?

24 MR. PIROZZOLO: That's correct.

25 THE COURT: So, then we will hear from those five

1 victims, and then we will hear from defense counsel, and I will
2 hear from Ms. Greig, if she wishes to be heard, before I impose
3 sentence.

4 So, we will take a 15-minute, brief recess.

THE CLERK: All rise.

6 (The Honorable Court exited the courtroom at 11:35 a.m.)

7 (Recess taken)

8 THE CLERK: All rise.

9 (The Honorable Court entered the courtroom at 11:55 a.m.)

10 THE CLERK: This Honorable Court is back in session.
11 You may be seated.

12 THE COURT: So, I will hear the Government and its
13 recommendation.

14 MR. PIROZZOLO: Thank you, your Honor. The
15 recommendation as set forth in our Sentencing Memorandum is a
16 10 years' period of incarceration, \$150,000 fine, a \$300
17 mandatory Special Assessment, supervised release of 3 years,
18 and forfeiture as set forth in the Plea Agreement. And I
19 believe that the Court has already imposed the Forfeiture Order
20 this morning, has already entered the Forfeiture Order this
21 morning.

22 Why is it a reasonable sentence? Under the relevant
23 statute, 3553(a), the Court shall impose a sentence that is
24 sufficient but no greater than necessary to accomplish the
25 purposes of sentencing. I am going to address certain of the

1 factors that are set forth in 3553(a). The first --

2 THE COURT: In the course of it, I assume that you
3 will address the question of why a departure or variance from
4 the *Guidelines* is appropriate.

5 MR. PIROZZOLO: I will as well. In fact, with respect
6 to -- the arguments are essentially the same, and we are
7 moving, we conditionally moved in the notice, we are moving
8 under 5K2.21 and 5K2.6 for a departure, a one-level departure
9 from where the Court currently is, which would accommodate the
10 sentence that is proposed. 5K2.21 permits the Court to
11 consider a wide range of conduct, not simply the conduct of
12 conviction, including uncharged conduct, to reflect the
13 seriousness of the offense, and 5K2.6 is a firearms departure
14 as well. The arguments with respect to the firearms departure
15 are similar to those that are --

16 THE COURT: But why is that not redundant in the sense
17 that it is specifically identified in the calculation of the
18 *Guidelines* already?

19 MR. PIROZZOLO: Because those were not taken into
20 account in the *Guidelines* calculation that --

21 THE COURT: How so?

22 MR. PIROZZOLO: The Group One, there was the Base
23 Offense Level of 30, there's the obstruction of justice of two.

24 THE COURT: So, it's through the grouping issues that
25 you want to have that brought back in?

1 MR. PIROZZOLO: Correct, correct. And while it was
2 applied in connection with Group Two but not Group One, because
3 Group One is the one that drives the sentence here, it is, in
4 fact, not included or it's not -- yes, it's not included in the
5 calculation that's driving the sentence here. So, that is the
6 basis on those.

7 So, the arguments under the 3553(a) factors for
8 purposes of the record also justify the one level of departure
9 that the Government is moving for. Where the *Guidelines*, as
10 calculated by the Court, currently sit don't reflect the
11 seriousness and the nature of the circumstances of the offense
12 in the following sense, and this is why the Government submits
13 an additional period above the *Guidelines* range or a variance
14 is appropriate.

15 First off, this is the most extreme harboring case in
16 terms of the length of time, 16 years, and the nature of the
17 offenses of which the fugitive has been accused of committing.
18 The fugitive, Mr. Bulger, in addition to the original extortion
19 indictment, was also indicted on a RICO for RICO conspiracy and
20 other various crimes that included 19 predicate acts of murder.
21 The duration of this, 16 years, this wasn't just a single
22 incident of harboring, it wasn't even months of harboring.
23 Essentially, the defendant here was committing a crime that
24 persisted day after day after day.

25 In its Sentencing Memorandum the Government set forth

1 some representative cases of harboring, and not one of them is
2 even remotely close in terms of the extremity of the conduct,
3 not remotely. They are not as close as the extremity of the
4 conduct.

5 THE COURT: Let me pause on this. It is clear, to me
6 anyway, that the duration is not included in the calculus of
7 the *Guidelines* and that is a grounds for departure. I do want
8 to go back, however, as to the serious of the offense. Isn't
9 that captured by the relation of the guideline to the
10 fugitive's offense, and it brings it very high because the
11 fugitive's offense is very high, but it is not something that
12 has been left unconsidered, I guess, is the way I would ask?

13 MR. PIROZZOLO: It is considered, but the degree to
14 which it's considered -- so, Mr. Bulger's crimes, the crimes of
15 which he is accused of are so serious, his guideline ranges are
16 43, Level 43. You're talking about, even if you subtract the
17 six, which is what the *Guidelines* provide for, that still
18 leaves you seven levels above where the *Guidelines* ultimately
19 ended up in this case, seven levels above.

20 THE COURT: Is it seven or eight?

21 MR. PIROZZOLO: 43 minus six would be 37. 37 minus 7
22 is 30, right? We end up at 29, that's right. So, eight, eight
23 levels. Because of that gap the *Guidelines* don't fully reflect
24 the seriousness of the underlying offense that Mr. Bulger has
25 been accused of. So, at least in those two respects.

1 I want to draw the attention of the Court to one case
2 that was in the table that I think is instructive. There are
3 other cases as well, but it was not necessarily -- it was in
4 the table but not highlighted in the memorandum. The United
5 States versus Andruska.

6 THE COURT: This is the Seventh Circuit case?

7 MR. PIROZZOLO: This is a Seventh Circuit case, that's
8 correct. It's an older case, it's a 1992 case. If you look at
9 the *Guidelines* calculation for the defendant in that case --
10 and in that case the facts were nowhere near as extreme as they
11 are here. This is a woman who spent a couple of months helping
12 a motorcycle gang member avoid capture. She drove to Florida,
13 crossed state lines. She at one point was stopped with the
14 fugitive in her car, she fled, got into a crash and was
15 arrested. The *Guidelines* that were calculated for her offense
16 were 97 to 121 months. She ended up getting five years. Just
17 for clarity, five years because the statutory max kicked in.
18 In that case it was five years. But by comparison --

19 THE COURT: Just so I am clear as to your
20 understanding of it, it was a charging decision on the part of
21 the Government?

22 MR. PIROZZOLO: In connection with that case, yeah.
23 Well, there may have been -- see, what is not in this case, in
24 the Andruska case, is the additional crimes. So, whether that
25 was a charging decision or not, there is no evidence of the

1 additional criminal conduct.

2 THE COURT: I see.

3 MR. PIROZZOLO: There is no evidence, I don't believe
4 in this case, certainly not of the number of firearms that were
5 housed by the fugitive with the defendant in that case. So, I
6 think if you compare it to the Andruska case, this is certainly
7 as serious and probably much more serious than in that case,
8 where the *Guidelines* turned out to be 97 to 121 months.

9 We can discuss that further, there are some wrinkles
10 to that that are different, if you have questions. But in
11 terms of the facts this is worse.

12 We discussed earlier today my unsuccessful attempt to
13 get the Court to apply the vulnerable victim enhancement.

14 THE COURT: Valiant, however.

15 MR. PIROZZOLO: Valiant. But that does not mean that
16 it's irrelevant to sentencing here. It is a fair inference
17 from this record that there was a conscious decision to target
18 people who would be, if not vulnerable victims in the legal
19 sense of the *Guideline*, who would be compromised in some way
20 such that they would be susceptible to these inducements, and
21 there is a clear pattern that Mr. Bulger engaged in. And here,
22 frankly, the evidence shows that Ms. Greig was part and parcel
23 of that as well. It didn't happen just one time for her
24 directly. There's at least three instances where she was
25 personally involved in obtaining -- well, at least two

1 instances, actually. I want to correct that. At least two
2 instances where she was directly involved in obtaining the IDs
3 from people who were compromised. The guidelines calculation,
4 given that the vulnerable victim enhancement didn't apply,
5 don't take account of that conduct, which increases her
6 culpability here. This is just simply not somebody who was
7 along for the ride and things would just show up. She was an
8 active participant in this effort to keep Mr. Bulger and
9 herself free from capture.

10 In addition, one of the additional elements that the
11 Court needs to consider is the need to reflect the seriousness
12 of the offense, to promote respect for the law and to provide
13 just punishment. We outlined our arguments in the Memorandum,
14 and I am not going to repeat them at length here, but I am
15 going to say that there is absolutely no evidence here that
16 Ms. Greig, and this is, frankly, reflected in the Sentencing
17 Memorandum, that Ms. Greig has taken any, she has not -- does
18 not understand or accept that what she did was truly wrongful.
19 She has accepted responsibility in a legal sense of the term
20 because she has to because she has been caught, but there is no
21 sense that she understands that what she did was wrong.

22 You can see in the Sentencing Memorandum there is this
23 discussion about Shakespearean sonnets. This isn't poetry.
24 This is a woman who, by choice, whether love or not, by choice
25 decided to help a man that has been accused of vicious crimes,

1 vicious and persistent crimes. There are family members here
2 of people who suffered from some of those crimes that
3 Mr. Bulger allegedly committed, grotesque violence. We have
4 all seen the corruption for which he was at the center.
5 Whether it's love or not, what she did willfully, knowingly,
6 intentionally was to keep these people from doing nothing other
7 than seeing Mr. Bulger come to face justice, to be called to
8 account to answer for the very, very serious crimes of which he
9 has been accused.

10 That removes this from any conceivable similar case.
11 The closest case that we found on the facts was the Gros case,
12 but what doesn't exist here in terms of the seriousness of the
13 offense was the degree of both corruption and violence that
14 Mr. Bulger is alleged to have engaged in, nor, frankly, was it
15 even the length of time. In that case, by my count, it was
16 nine years. I think other cases have said it was six years. I
17 think they get it wrong. I think it was nine years. Here we
18 are talking almost double, almost twice as long.

19 So, the comparison to other cases, the need to reflect
20 the seriousness of the offenses, and then ultimately in terms
21 of the 3553(a) factors, the issue of deterrence -- now, I don't
22 know the specific deterrence in terms of her specific
23 deterrence of committing identity fraud and harboring are
24 particularly relevant here. It's unlikely she is going to be
25 harboring some other fugitive.

1 But the issue of deterrence is substantial here.
2 People like Mr. Bulger, who is alleged to have been an
3 organized crime figure for many years, needs help; he cannot do
4 it alone. You can see from the record of this case that
5 Mr. Bulger spent a lot of time planning. There were people who
6 helped him. It was necessary for them to help him, and nobody
7 helped him more, nobody, than the defendant, Ms. Greig. To
8 send the deterrent message it is essential to take that into
9 account. This is just not any other kind of harboring case, it
10 just isn't, and to do that it has to reflect a very, very
11 serious penalty under these circumstances. It is hard to
12 imagine, frankly, a more serious harboring case than this one,
13 and to do anything other than what the Government submits is a
14 reasonable sentence here would potentially send the wrong
15 message in terms of deterrence.

16 Now, we are already talking about a very serious
17 sentence under the *Guidelines*, but what the Government is
18 requesting is one additional level up that would permit the
19 10-year sentence here, and under those circumstances the
20 proposed sentence would be reasonable.

21 Unless the Court has any other questions of the
22 Government, we would otherwise rest on our papers.

23 THE COURT: No. I think I understand the Government's
24 position.

25 I indicated that I would hear the now five individuals

1 who want to speak, and I indicated briefly my view that this is
2 a matter of discretion rather than a matter of legal
3 obligation, and I think I owe it to all concerned to explain
4 that.

5 Congress created the Crime Victims' Act to provide an
6 opportunity for people outside the system to provide input at
7 critical stages in the system, but they also created a set of
8 constraints. It was not meant to be an obligation of the
9 Courts to let anyone who wants to speak on any occasion speak.
10 They set up a set of standards, and those standards really go
11 to the question of what we call "direct and proximate cause" in
12 the civil law, which takes us back to foreseeability; that is,
13 whether or not a person who wishes to speak is someone who is
14 within the scope of the understanding of the person who
15 committed the crime.

16 Here, we have not a derivative crime but a crime that
17 depends upon somebody else's bad acts. The individuals who
18 have identified themselves as wishing to speak are people who
19 have been harmed by Mr. Bulger's activities, as they allege.
20 The relation to Ms. Greig is much more attenuated. There is no
21 question that she assisted Mr. Bulger in delaying the point of
22 judgment for which the victims of Mr. Bulger's crimes properly
23 wish to see, and some of them, because of the 16 years, have
24 not been able to.

25 But the legal standard for the Crime Victims' Act is

1 one that essentially tracks what we call "tort law," civil law
2 of harms, and the Government makes a valiant effort to say that
3 the law of infliction of emotional distress would be applicable
4 here. I have to disagree. If this case were presented to me
5 in the context of a civil action against Ms. Greig for
6 intentional infliction of distress, based on the record that I
7 now have I would probably grant summary judgment for Ms. Greig.
8 The reason is that her activities are simply too attenuated
9 from the harm that the law provides a remedy for to the persons
10 who have identified themselves as victims here.

11 So, I decline, as I said, to do this as a matter of
12 right. I do it as a matter of discretion because, it seems to
13 me, that, irrespective of what I am obligated to do, this is
14 the right thing.

15 On that point, it seems to me that this is one of
16 those occasions in which a little bit of history is worth a
17 volume of logic. I will start with the volume.

18 There is a book that has just been published by
19 Professor Bibas of the University of Pennsylvania Law School
20 called *The Machinery of Criminal Justice*. What he does is, he
21 says there is a division now between insiders and outsiders in
22 the criminal justice system. There was a time around the
23 Revolution in which everything was transparent; things happened
24 in a community and they were observed in the community. But,
25 as a result of professionalism, the increase of cases and a

1 whole variety of factors that I will not go into here, we now
2 have insiders: law enforcement people, prosecutors, defense
3 counsel, although that is less relevant in this context, and
4 judges. The law enforcement people gather evidence, make
5 recommendations, the prosecutors make the charging decision and
6 the judges dispose of it.

7 But there is something more fundamental going on, and
8 it is illustrated as dramatically as it can be by this case,
9 and that is that the public is no longer directly involved,
10 except as jurors, in the criminal justice process.

11 So, let us go back to the question of law enforcement.
12 This case, or at least Mr. Bulger's case, arises out of a
13 laser-like focus on obtaining convictions of the Angiulo
14 Family. Other considerations were put to one side, and the FBI
15 made a Faustian bargain with certain individuals, Mr. Bulger
16 included, to obtain the evidence that was necessary; first, to
17 get a Title III application and then to get a conviction. That
18 was at a time when the view in the Department of Justice was
19 that the FBI made its own choices about top-level informants,
20 and prosecutors did not ask any questions.

21 It was illustrated in this case, it comes to mind, by
22 current events in the prosecution of Howard Winter for the
23 race-fix case back in 1979. The evidence in various cases is
24 that the FBI prevailed upon the prosecutors not to include
25 Mr. Bulger in the charges. Why did they do that? Well, they

1 did not want to compromise Mr. Bulger because he was providing
2 evidence for purposes of the main chance, which was
3 Mr. Angiulo.

4 Now, there was corruption in the relationship that
5 Mr. Bulger developed with the FBI, that is clear, and the role
6 of the Department of Justice, as I said, was not to inquire too
7 deeply into exactly what was going on. But as these cases
8 unfolded, it became clear what was going on, and it took Judge
9 Wolf 600 pages to lift the rock off of what was happening to
10 disclose what was going on. It is important, for historical
11 purposes, to emphasize that the Department of Justice fought
12 him tooth and nail to get the information out in various ways,
13 declining to provide various kinds of information that was
14 relevant to the Faustian bargain that was made by the FBI.

15 This was a difficult time for law enforcement in this
16 City, where other law enforcement agencies declined to
17 cooperate with the FBI, conducted independent investigations.

18 But all of this was insiders, undisclosed to the
19 public, until, frankly, Judge Wolf made that disclosure.

20 Things have changed, obviously. The FBI has
21 acknowledged its responsibilities with respect to certain
22 agents. The Department of Justice has been much more vigorous
23 and forthcoming on the criminal side with respect to the
24 prosecution of matters like this and the transparency with
25 respect to informants. The treatment of high-level informants

1 I perceive, based on my vantage point, is no longer as
2 deferential as it once was, although it is still inflected by a
3 desire to maintain informant confidentiality. But we have in
4 those two stages of the insider process, the choice of
5 prosecution and investigation by the FBI or law enforcement and
6 the choice of charging by the Government, the essence of the
7 insider-outsider dichotomy that Professor Bibas has identified.

8 For what they considered to be good and sufficient
9 reasons, persons in the FBI were prepared to condone violence,
10 and a number of persons who are speaking here today are victims
11 of that violence, put to one side the role of Ms. Greig at this
12 point.

13 But there is a third dimension. The Department of
14 Justice chose vigorously and technically to oppose civil cases
15 brought by victims, relying upon, ultimately, although there
16 were a variety of initiatives in defense, the statute of
17 limitations as an affirmative defense, which someone who
18 accepted responsibility might not necessarily invoke.

19 So, the case law of this Court and the Court of
20 Appeals is littered with choices by the Department of Justice,
21 in its incarnations I think principally in Washington in its
22 Civil Division, to continue to exclude the victims of
23 Mr. Bulger's activities; in short, to, at least in certain
24 cases, assure that they have no voice.

25 So, a role for allocution, which is the fancy word for

1 this sort of thing, for these kinds of victims is to give them
2 the opportunity to express themselves about their hurt and
3 their pain in a matter that, as I have said, is not such as to
4 provide them with a cause of action against Ms. Greig but,
5 nevertheless, arises in a context that is exceptionally
6 important for them and for the community.

7 Now, why did Congress put limitations on the Crime
8 Victims' Act? Well, it is because the criminal justice system
9 and the role of insiders is supposed to be to refine vengeance.
10 The development of the criminal law has been largely a movement
11 away from vengeance or some kind of personal and private
12 retribution to a public role for professionals.

13 The outsiders lack the understanding of these very
14 complex *Guidelines* that read like the *Internal Revenue Code* and
15 reduce judges to the role of Certified Public Accountants. But
16 they have a sense of justice themselves, and it is a moral
17 sense that is entitled to the opportunity to be heard. Will it
18 be accepted in precisely those terms? Not necessarily. There
19 are a variety of factors that play on sentencing. But,
20 nevertheless, they have a right to be heard.

21 Now, there are dangers involved in the kind of extreme
22 statements that sometimes get made that do not show the
23 proportionate justice that is necessary in dealing with a case
24 like this or simple-minded resolutions.

25 The opportunity to speak is not a rehearsal for a book

1 tour. It is the opportunity to bring to the attention of the
2 public the larger issues which are subordinated when the
3 insiders play an insider game, as they did until a full range
4 of misconduct was developed -- and I, again, give Chief Judge
5 Wolf the credit for the diligence of pursuing this -- by the
6 Court.

7 Now, the Courts tend to resolve cases in light of what
8 the parties put before them, as they should. So, one could
9 say, well, you look on the *Guidelines* and one is on one side
10 and one is on the other and the Court, showing a fine balance
11 of the type that we have recognized in Solomon, finds something
12 in between.

13 But the Court has an independent responsibility, and
14 it is an independent responsibility to ensure that the
15 community feels that justice has been done as best the Court
16 can within the constraints of the law. In order to understand
17 that more fully, it is necessary I think in cases like this,
18 and particularly this case, to permit persons who are victims
19 of Mr. Bulger's activity to speak at the sentencing of
20 Ms. Greig, although under our statute I do not think that they
21 are entitled to that, they have a legal entitlement to that.

22 It seems to me important to develop what Professor
23 Bibas has identified more generally, because it is a constant
24 invitation to untethering the moral sentiments of the community
25 from the process-oriented approach of the insiders, including

1 judges. I call that out because this case, as I have said,
2 raises these issues as dramatically as any case could do so.

3 So, for those reasons, as I have tried to explain them
4 here, we are going to be hearing from first -- I am doing this
5 in alphabetical order -- Mr. Connors, then Mr. Davis, then
6 Ms. Donahue, then Mr. McGonagle and Mr. Rakes.

7 So, Mr. Connors, I am not sure where you are, but if
8 you would go to the microphone here, please.

9 MR. CONNORS: Good morning. I am Timmy Connors.

10 THE COURT: Mr. Connors, you have the same problem I
11 have, which is a soft voice. If you could move the microphone
12 down. Mr. Pirozzolo maybe can turn it on for you.

13 MR. CONNORS: Good morning. I'm Timmy Connors, and 37
14 years ago today, on June 12th, 1975, my father, Eddie, was
15 killed by "Whitey" Bulger, a man you did everything in your
16 power to hide and protect.

17 You're not here by choice; you're here only because
18 you were caught. You're as much a criminal as "Whitey" and
19 should be handled as such. You may not have killed anyone like
20 he did, but in the 16 years you hid him you killed a lot of
21 hopes and dreams of my family members that have passed on in
22 that 16-year span never seeing their loved one's killer brought
23 to justice.

24 Your attorney is trying to portray you as a kind and
25 gentle woman. You're not. You're a cold-hearted criminal.

1 You never showed any sympathy towards any of us. The only time
2 you showed any emotion is when your brother was mentioned.
3 Truth be told, if I had a sister like you, I would have killed
4 myself, too.

5 Judge, I ask you if you give her anything less than
6 what the U.S. Attorney is asking for, you may as well walk over
7 here and stick this pen in my eye, because you would be causing
8 me a lot less pain that way.

9 Thank you.

10 THE COURT: Thank you, Mr. Connors.

11 I think I should underscore what I have said before,
12 which is the risk in the course of the allocutions that a sense
13 of hurt leads to rhetorical overstatement that does not assist
14 in fashioning a sentence as much as it could.

15 But this is the occasion for persons to speak from
16 their heart in the way that they wish to. It is also an
17 illustration of why it is that we have a criminal justice
18 system in which professionals make a number of these decisions.

19 So, we turn next to Mr. Davis.

20 Mr. Davis. I am doing it by alphabetical order.

21 MR. DAVIS: Oh, they wanted me to go last, your Honor.

22 THE COURT: Well, I will make the decisions on who
23 goes when.

24 MR. DAVIS: My name's Steve Davis. I am speaking on
25 behalf of my mother and my sister, Debra Davis. The corruption

1 for over 30 years in Boston has been held hostage by James
2 "Whitey" Bulger, the Bulger family, Stephen Flemmi and the FBI.
3 But I do wish to thank the U.S. Attorney Fred Wyshak, Colonel
4 Tom Foley, Sergeant Steve Johnson, and the Massachusetts State
5 Police, and DEA Agent Dan Doherty and Brian Kelly for bringing
6 all this to where we are today for the justice we're looking
7 for.

8 Since my sister's disappearance in '81 until the day
9 my mother died in 2007, she never stopped grieving for her
10 daughter over the 20 years because of the criminal activities
11 of the FBI, Steve Flemmi, Whitey Bulger and his family and
12 Catherine Greig. My mother was unable to live long enough to
13 witness the capture, the prosecution for my sister, my sister's
14 murderer, "Whitey" Bulger. This is due to the tremendous
15 amount of support "Whitey" Bulger received from the defendant
16 Catherine Greig.

17 (Pause)

18 THE COURT: Take your time, Mr. Davis.

19 MR. DAVIS: Catherine Greig's acts were not those of a
20 person who didn't understand the consequences and actions. She
21 was not held against her will. Her loyalties lied with Bulger,
22 not the murdered victims. She was a willing partner and
23 co-conspirator of "Whitey" Bulger. She was determined, as
24 Bulger, to elude the authorities and avoid prosecution for his
25 murders.

1 This woman does not deserve any leniency at all. She
2 should get the maximum punishment.

3 She doesn't even have the heart to look any of us in
4 the eye.

5 Catherine, you're a dirty bitch.

6 Thank you, your Honor.

7 THE COURT: Thank you, Mr. Davis.

8 As you know, and as I have said, this is an
9 illustration of the limitations of allocution and the tendency
10 to lead to an unmeasured and vengeful set of considerations,
11 but it also, as I have said earlier, reflects the view of
12 genuine victims.

13 So, I guess Ms. Donahue is next.

14 MS. DONAHUE: Good afternoon, your Honor. My name is
15 Patricia Donahue. I'm the wife of Michael Donahue.

16 I would like to start off by saying that I feel
17 Catherine Greig bears a lot of responsibility for "Whitey"
18 Bulger being a fugitive for 16 years. She knew exactly what he
19 was capable of and still made the decision to be with him. I
20 believe he never would have survived all of those years without
21 her help.

22 Her decision has a severe impact on not only my life
23 but my children's lives and the other victims' lives. She was
24 his enabler. No matter where they were, she was his constant
25 companion and took charge of his overall well-being.

1 I feel that she should be given the maximum sentence.
2 As my family has been given the maximum sentence, so should
3 she. Otherwise, the message being sent is that it's okay to
4 harbor a fugitive, in this case the most wanted fugitive in
5 America. I would like the Court to take all these things into
6 consideration.

7 Thank you.

8 THE COURT: Thank you, Ms. Donahue.

9 Mr. McGonagle.

10 MR. McGonagle: Good afternoon, your Honor.

11 Catherine Greig was my aunt by marriage. She was
12 married to my uncle, my youngest uncle, in 1971, Robert
13 McGonagle. She was welcomed into our family, and I spent many
14 hours with her at her mother Janette's house as a boy. I
15 traveled with her for family vacations and other activities in
16 and around the Boston area. I always regarded Catherine not
17 just as a relative but as a real friend.

18 James "Whitey" Bulger is charged with the murder of my
19 father, Paul McGonagle, in an indictment pending in this Court.

20 My family, including my mother, my brother, my uncles,
21 my aunts, feel that Catherine Greig betrayed our family in
22 aiding and abetting Bulger to remain a fugitive for 16 years
23 before being apprehended.

24 This woman, once married to my Uncle Bob, provided
25 invaluable assistance to Bulger to remain free and avoid

1 punishment for his many crimes. She well knew who and what
2 Jimmy Bulger was and made a willing and conscious decision to
3 help him remain free.

4 The last time I saw my father, he was on his way to
5 pick up my brother, Sean, at a local ice rink. He never
6 returned. My mother, Mary, was 36 years old, my brother, Sean,
7 was 10, I was 14. My father simply disappeared as far as we
8 were concerned. Twenty-seven years would go by before we knew
9 his fate.

10 During these years, I carried his picture with me
11 always. Everywhere I went, for business or pleasure, I looked
12 for him.

13 My father was a great father, brother, friend and
14 husband. No matter his faults, he did not deserve to die the
15 way he did.

16 When my father disappeared my mother, Mary, became the
17 sole bread winner. She worked to support us as a court officer
18 in Boston for 33 years. She did an outstanding job raising my
19 brother and me under the circumstances, and my brother and I
20 have gone on to lead productive lives, have families and given
21 our mother three beautiful grandchildren.

22 It my family's firm belief that Catherine Greig was
23 aware of Bulger's involvement in the murder of my father.
24 Catherine Greig has shown herself to have a knowing and willful
25 disregard for the law and a callous disregard to me and my

1 family.

2 The pain and loss that I and my family have felt for
3 the many years my father was missing is only exacerbated by the
4 fact that Catherine Greig, once a member of our family, aided
5 the murderer of my father to remain free for 16 years.

6 For these facts, we urge the Court to give Catherine
7 Greig a sentence fitting the seriousness of her crimes. Due to
8 the personal relationship which she had with me and my family,
9 she should be sentenced to the maximum possible under the law.

10 Thank you.

11 THE COURT: Thank you, Mr. McGonagle.

12 Mr. Rakes.

13 MR. RAKES: Hi. Good morning.

14 My name is Steve Rakes. In 1993 my family and I built
15 a liquor store in South Boston. That was the start of a
16 nightmare, and it continued until 1995. I was told in 1995
17 they would have captured this man Bulger, but that never
18 happened. Now comes 16 years later, the person that helped
19 Bulger to evade the law is looking for fair and equitable time
20 to be released. I would ask the Judge to give her nothing less
21 than the maximum. If not, you go outside your scope, sir, and
22 give her additional time.

23 Thank you very much.

24 THE COURT: Thank you, Mr. Rakes.

25 So, Mr. Reddington, I will hear from you.

1 MR. REDDINGTON: Thank you, your Honor. You know,
2 when you just went through the analysis of the book and the
3 insiders and dealing with the criminal justice system and how
4 we try to step away from revenge, this is a classic example of
5 that. You sit up there with restraint, you speak from
6 obviously your experience, your knowledge, your wisdom, you are
7 dealing with the books, the *Sentencing Guidelines*, but yet
8 humanity in trying to be a judge in trying to be fair and
9 trying to be just and trying to do justice.

10 When you consider who I am standing next to, who I
11 have come to know, your Honor, as I have described in my
12 Sentencing Memorandum, it is pretty apparent that I think a lot
13 of Catherine Greig. I know that she has been called some names
14 here today, and I know that there's an awful significant
15 overflow of emotion, which is understandable with the families
16 of these individuals.

17 But when you analyze what Catherine Greig actually
18 did, Judge, and I put my argument, if you will, in the
19 Sentencing Memorandum, is look at this woman at the age of 60,
20 with no criminal record, who had been living with a man that
21 she was truly in love with, but you consider what she did. I
22 mean, even with the identification cards, your Honor has looked
23 at the photographs, you have seen the types of cards that they
24 were and not once were they utilized. Did she ever derive a
25 benefit? Did she ever use it to obtain insurance, to defraud

1 the Government, to get any type of monetary compensation? They
2 sat in that apartment.

3 And in the course of her living with Mr. Bulger, yes,
4 she took him to the dentist and she took him to the doctor.
5 They had, as I argued, a very sedentary, modest lifestyle, no
6 criminal activity. Mr. Bulger, who has been described, and I
7 think we all agree, is a gentleman who is known to have a
8 temper, who is certainly a dominating, obviously a dominating
9 individual, that he lived with Catherine. She cooked for him,
10 she was basically his house maid. I know that the Government
11 has argued that she in some sense was, you know, an evil
12 mastermind and orchestrating things. Basically her life
13 consisted of living in that apartment with him, shopping,
14 rescuing animals and walking on the streets, once in a while
15 having dinner. A very, very sedentary lifestyle.

16 I think it's important to note, your Honor, the
17 Government has made a large issue out of the purported
18 targeting of vulnerable individuals, portraying an image that
19 Mr. Bulger and Catherine would troll the areas of the beach
20 looking for vulnerable people that were either drunk or
21 homeless or having mental issues, and it couldn't be farther
22 from the truth. If they were targeting anyone it would be
23 someone that would look like him or that he could use the
24 identification.

25 What's really telling is when you look at one of the

1 302s, your Honor -- I know you have read every piece of paper
2 in the submissions in this case -- but one of the things that's
3 noted is dealing with Mr. JL, one of the alleged victims that
4 were targeted and they were suffering from vulnerability, it's
5 important to note that Mr. Bulger, according to the
6 investigation and the statement, indicates that Mr. Bulger had
7 great respect for this individual. He had been in the
8 military. He attempted to get him to quit drinking because the
9 guy had a significant alcohol problem. He supported him for 10
10 years, that he made sure that Mr. L was able to be taken care
11 of, and he stated that he tried very hard to get him to get off
12 the liquor. And the trooper or the interviewing individual,
13 the FBI gentleman, indicates that Mr. Bulger described in their
14 investigation, revealed how close he was with Mr. L, and, as I
15 say, indicates that he did indeed support him for 10 years, and
16 that Bulger became visibly emotional when talking about Mr. L's
17 death.

18 I think that speaks volumes, your Honor. This is not
19 a situation where there is a cold, calculating, sinister woman
20 that is violating the laws. I understand that there is a need
21 for punishment, and the 3553 factors, your Honor, obviously you
22 have in front of you her age, her health, lack of a criminal
23 record. What she did in comparison to what the Government is
24 requesting is Draconian.

25 I think I pretty much said it all in my sentencing

1 recommendation, your Honor. I know that you, as a judge, are
2 going to consider the interests of justice and try to mete out
3 a fair sentence but under the law one that is not excessive or
4 not more, if you will, than what justice calls for.

5 We have talked about the 3553 factors in the sense of
6 need for deterrence, punishment. I think the comment that she
7 is not going to be harboring any fugitives I think clearly is
8 one that, maybe he was being somewhat jocular, but the point is
9 that Catherine Greig fell in love with Mr. Bulger, and that's
10 why she was in the situation that she was in.

11 I don't think there's much more that I can say. I
12 know that your Honor has read every document.

13 I would suggest to the Court that Ms. Greig did not
14 believe that Mr. Bulger was capable of these homicides of which
15 he is yet to be proven guilty. I think that's important to
16 note.

17 And I think what else is important to note, your
18 Honor, is that she has accepted her responsibility. She has
19 changed her plea to three Class D felonies, 5-year caps on
20 each, not 20-year felonies, and I think, your Honor, knowing,
21 as I do, the study that you put into the *Guidelines* and knowing
22 that the *Guidelines* are advisory, it's really important that a
23 judge not sit, as you said, and kind of become a CPA and
24 calculate numbers. What is really important is that you sit up
25 there and that you are the epitome of justice. What you say is

1 what justice requires, regardless of criticism, regardless of
2 anyone's hostilities. Just as my situation, as this woman's
3 advocate in this courtroom, that whatever your Honor's decision
4 is, I certainly would not set about and criticize it, because
5 you are the epitome of justice. You are to impose a fair
6 sentence, not a vengeful one. Thank you.

7 THE COURT: Thank you, Mr. Reddington.

8 Ms. Greig, I will hear from you, if there is something
9 that you would like to say at this point.

10 MR. REDDINGTON: Your Honor, Ms. Greig would
11 appreciate the opportunity but would decline. Thank you.

12 THE COURT: All right. What I am going do is take a
13 the luncheon break at this time. I want to review my notes
14 here. We will come back at 1:30.

15 THE CLERK: All rise.

16 (The Honorable Court exited the courtroom at 12:45 p.m.)

17 (Lunch Recess taken)

18 THE CLERK: All rise.

19 (The Honorable Court entered the courtroom at 1:30 p.m.)

20 THE CLERK: This Honorable Court is back in session.
21 You may be seated.

22 THE COURT: First, I am going to allow Motion No. 103,
23 which is the Protective Order concerning an informant based on
24 the arguments that were presented here. It is clear that the
25 information concerning the informant is not material to the

1 decision in this case, nor, frankly, relevant to the larger
2 issues of sentencing that are presented.

3 I spent a little bit of time thinking about the
4 presentation of the victims of Mr. Bulger's conduct, and it
5 seems to me important to comment on it again. It illustrates
6 the tensions in the criminal justice system. The statements of
7 certain of the victims were cruel, crude, heartfelt, but
8 reflecting vengeance, a desire to get back. That is where our
9 civilization started; it is not where it is supposed to end.
10 It illustrates the importance of having a professional criminal
11 justice system that tries to refine that vengeance into a fair,
12 proportionate and dispassionate resolution of matters.

13 That tension is particularly evident here, because
14 this is a case that illustrates how the criminal justice system
15 simply broke down because the insiders took control. But that
16 does not mean that a professional criminal justice system is
17 not the proper way to resolve this. The question of how much
18 influence outsiders have will be one that I am sure will be
19 debated for a substantial amount of time, and I happen to think
20 that they should have more of a role and that there is a role
21 for restorative justice. There is not, however, a role for
22 cruelty, crudity and vengeance.

23 What the criminal justice system properly does is
24 attempts to channel understandable emotions into a formal set
25 of accommodation of competing interests. They are done through

1 the *Sentencing Guidelines*, which give us crude and illusory
2 mathematics of what a sentence should be, but they provide a
3 context in which to consider the question of proportionality in
4 sentencing; and, of course, judges are obligated to calculate
5 them as best they can, and I have, as best I could,
6 understanding that there are objections to various calculations
7 that are made by both parties.

8 I acknowledge that the *Guidelines* do not quite capture
9 everything that is involved in this case. They do not capture
10 the question of duration. It is possible to say that the
11 firearms adjustment should have been put in Group One, not
12 Group Two. That would make a difference. It is possible to
13 say that the seriousness of the underlying offense for which
14 harboring was involved is so serious that it should be bumped
15 up.

16 Those are all questions on which reasonable people
17 could disagree, and it is up to the Sentencing Commission to
18 make those determinations, and then it is left to the judge.
19 It is left to the judge to consider factors that Congress has
20 identified in Section 3553, and so I will work my way through
21 those factors before reaching the bottom line.

22 The first is the nature and seriousness of the offense
23 and the character of the defendant. This is a serious
24 collection of offenses, no question about that. I think,
25 however, we would be ignoring matters if we did not step back a

1 little bit to recognize that there are differences of opinion
2 with respect to harboring in the law of the several
3 jurisdictions.

4 Of course, this is a federal case that is decided by
5 federal law, but if you turn to the law of the Commonwealth of
6 Massachusetts, having a particular relationship with a
7 defendant fugitive is a defense. It is a defense for brothers,
8 sisters and wives.

9 Why is that? Well, because the law of Massachusetts,
10 anyway, recognizes that there are competing demands on people
11 when they get themselves involved with relatives who cause
12 problems, and Massachusetts, while it does not have common-law
13 marriage, recognizes common-law marriage as creating a basis
14 for a defense.

15 So, if, for example, Rhode Island has a couple with a
16 common-law marriage and a crime of harboring is committed in
17 Massachusetts, there is a defense.

18 Now, why do I go into this discussion of alternative
19 jurisdictions? Because it is not applicable here. First, it
20 is not federal law. Number two, neither Massachusetts nor
21 California recognizes common-law marriage. I do it to
22 emphasize that what is involved in all of these matters is a
23 kind of accommodation of competing impulses to protect a family
24 relationship and recognize that sometimes it is too difficult
25 to give up your relative. That, at least, is the Massachusetts

1 State law resolution.

2 But the federal law recognizes a higher obligation,
3 and the higher obligation is not to be an accessory after the
4 fact, not to help somebody out. But if this were simply
5 harboring, as I indicated and Probation indicated in its
6 calculations, the guidelines would be relatively low.

7 And that is the point. It is not merely harboring.
8 It involves the use of identity, a matter of real concern
9 generally in our society. It was for a very long duration,
10 longer than any of the recorded case law indicates. It
11 involved harboring someone who is accused of the most serious
12 crimes imaginable, and for those reasons the guideline pushed
13 up. But even if the guideline had not pushed up, this is a
14 serious offense and there is no ignoring that, and it would be
15 promoting disrespect for the law not to impose a serious
16 sentence for that.

17 The flip side of that first issue is the nature and
18 characteristics of the defendant, and I will step back from the
19 acts involved here for a moment.

20 The defendant is an individual who is educated,
21 composed, capable; in short, a person who can make her own
22 choices, and the recurrence to a kind of "chick lit" or sexist
23 narrative that says this is a story about a woman who liked bad
24 men and that was a bad choice does not capture it. The
25 defendant is a person capable of making her own choices and had

1 a long time to make those choices. That is what "duration"
2 means to me in this context.

3 Nevertheless, I do not, of course, countenance the
4 crudity that was used in the statements of victims, but more
5 than that, it is apparent that the defendant has strong
6 qualities in her associations with others and in her conduct
7 apart from her relationship to Mr. Bulger. But, having stepped
8 back from it, it is her relationship with Mr. Bulger and her
9 choice to make that relationship with Mr. Bulger and to
10 continue that relationship with Mr. Bulger that is the critical
11 factor here.

12 So, then I turn to the question of what we call
13 "deterrence." Well, deterrence breaks into two parts. The
14 first part is specific deterrence: how do we keep Ms. Greig
15 from doing this again? It is not ironic to say that I do not
16 think that this is going to happen again, that she would be led
17 to this. But there is general deterrence. That is, what do we
18 say to other people who might consider a relationship like this
19 and continue in a relationship like this in which what is
20 involved is enabling someone accused of the most serious crimes
21 to stay at large for an extended period of time and involves
22 other violations of federal law: identity theft or fraud,
23 whatever label you put on the nature of offense?

24 This is really critical to a society that has all
25 sorts of opportunities for losing privacy to have identity

1 taken away. Now, the identity was taken away by paying for it,
2 somebody who was willing to do it. In fact, as I mentioned,
3 the individual who was at the source, I believe, of Count
4 Three, said nothing bad happened as a result of that. They
5 were vulnerable people in a colloquial way, colloquial sense,
6 although, as I have indicated, I did not find them to be so in
7 the precise terms of the *Guidelines*. But it is critically
8 important, I think, to impose a sentence that is exemplary to
9 tell others who might be in Ms. Greig's position, considering a
10 relationship and continued relationship with a fugitive felon
11 that you will pay for it.

12 Now, one could say it has already been paid for in a
13 life of 16 years of what appears to be extended banality and
14 concern in looking over your shoulder. That, perhaps, is the
15 banality of *this* evil, but there has to be a price imposed, I
16 believe, to serve general deterrence.

17 I then turn to the question of role in the prison,
18 which is generally put in terms of will prison interfere with
19 somebody's development, either educationally or vocationally;
20 is there something the prison can do? It is not that the
21 prison is there to provide assistance to people, and no one
22 would ever send or should ever send anybody to prison to give
23 them job training or to help them out, but I look at the
24 question of what does prison mean here?

25 Well, in an odd sort of way, for a person like

1 Ms. Greig it means the opportunity in a constrained setting to
2 demonstrate the personal qualities that Mr. Reddington made
3 reference to, association with other people who may be
4 vulnerable. But ultimately the question is one for her, like
5 all of these questions are, what she is going to make of it.

6 I look at the question of disparity in sentences.

7 Well, the Government quite properly points out that there has
8 not been a harboring case like this; at least, I have not been
9 able to find one, and the Government has not either. So,
10 disparity, that is, how do I compare someone else who has done
11 something like this to the sentence to be imposed on Ms. Greig?
12 There are not comparators to be applied.

13 What it ultimately comes down to is imposing a
14 sentence for deliberate choices that someone made that are
15 harmful to the community, and these were choices Ms. Greig did
16 not have to make and choices that she could choose to abandon,
17 and she did not do it.

18 Now, laced through this is a kind of sense of loyalty
19 and stand-up quality. It is benighted. Someone is responsible
20 for their own acts, and if they involve themselves with someone
21 who has a small arsenal of weapons and does not leave him, at a
22 minimum leave him, is responsible for a great deal.

23 I make the sentence solely on the basis of the conduct
24 of Ms. Greig, but I recognize that other defendants have
25 received benefit from cooperation. That is not on the table

1 now, but it is a way for Ms. Greig to demonstrate that she has
2 abandoned bad choices, and there is a mechanism for that to be
3 effectuated. But the sentence is not for failure to cooperate;
4 it simply recognizes that she has not.

5 I have given this a great deal of thought, as all of
6 us have. I did not know what the *Sentencing Guidelines* would
7 be finally until we had argument and I had an opportunity to
8 listen to counsel. I had some rough sense, having been
9 involved in the criminal justice system for some years, of what
10 I would think a proper sentence would be, and I find on this
11 occasion that they coincide for me.

12 I am going to impose a sentence of 96 months'
13 incarceration. That is 8 years.

14 I am going to impose a fine of \$150,000. It is
15 apparent that there are available assets to Ms. Greig from
16 which that fine can be paid. I am going to require that fine
17 be paid in a lump sum no later than 60 days from today. To the
18 degree it is not, the interest will start to run on that.
19 There will be an obligation under the prison financial
20 responsibility program to pay it, and when we get to supervised
21 release there will be an obligation to pay it as a condition of
22 supervised release.

23 There is a period of supervised release of 3 years
24 that I will impose. I will get back to that in just a moment.
25 And there is an obligation that she pay a Special Assessment

1 for each of the three counts of \$100 for each of the counts, a
2 total of \$300.

3 Turning to the question of supervised release, in
4 addition to the standard conditions of supervised release, she
5 is obligated not to commit another federal, state or local
6 crime or illegally possess a controlled substance. There does
7 not appear to be substance abuse in the record and, as a
8 consequence, I am not going to impose drug testing; I will
9 waive that. I will, however, require Ms. Greig to submit to
10 the collection of a DNA sample as directed by the Probation
11 Office.

12 She is obligated not to possess a firearm or other
13 dangerous weapon.

14 She is obligated to use her true name, and she is
15 prohibited from the use of any false identifying information,
16 and that includes but it is not limited to, aliases, false
17 dates of birth, false Social Security numbers or incorrect
18 places of birth.

19 I have indicated that she is obligated to pay the fine
20 in a lump sum no later than 60 days from today. To the degree
21 that she does not, interest begins to run on that, and,
22 ultimately, if it is not paid, it will be paid according to a
23 schedule that is created by the Probation Office and approved
24 by me.

25 But, as I have indicated, even with some disputes over

1 assets and what she actually has an interest in, it is clear to
2 me that there is sufficient assets to pay this fine. Until
3 that fine is paid, she is prohibited from incurring any new
4 credit charges or opening additional lines of credit without
5 the approval of the Probation Office, and she is obligated to
6 provide the Probation Office with any requested financial
7 information, and that, of course, can be shared with and will
8 be shared, I am sure, with the United States Attorney's Office,
9 the Financial Litigation Unit of the United States Attorney's
10 Office.

11 I have given some thought to aspects of community
12 service. I think, given the defendant's age and particularly
13 the age at which she would be released from prison, that is
14 simply inappropriate under these circumstances.

15 I think I have made clear that I do not countenance
16 the way in which people spoke to you today, Ms. Greig. The
17 purpose of the criminal justice system is fairness, dispassion
18 and balance, and much of the commentary was none of that. But
19 there is a harder lesson involved, apart from acts of cruelty
20 towards you, and that is we are all responsible for what we do.
21 We all make choices, and when those choices undermine the
22 fabric of our society in the way in which harboring the way you
23 did Mr. Bulger works out, then there is a price to be paid, and
24 the price is the one that I have indicated here.

25 You should understand that you have a right of appeal,

1 and you will discuss with your counsel whether that makes sense
2 under these circumstances. Are there other conditions that the
3 parties would have me impose?

4 MR. PIROZZOLO: Yes, your Honor, just a housekeeping
5 matter. With respect to the forfeiture, the Government would
6 ask that the forfeiture order be included in the oral
7 pronouncement and in the written judgment --

8 THE COURT: It will, and to the degree that the events
9 today have not included it as a matter of the oral
10 pronouncement, I am imposing what is imposed by the Preliminary
11 Order of Forfeiture as part of the judgment in this case.

12 MR. PIROZZOLO: And, again, I think you said this at
13 the beginning, but with respect to the objections, the
14 Government still preserves --

15 THE COURT: I understand that the parties adhere to
16 their objections, that they have not waived anything that has
17 been argued to me either in their submissions or orally today.

18 MR. PIROZZOLO: And to the extent the sentence is
19 different from the Government's position, the Government
20 reserves its right to object as well.

21 THE COURT: My understanding is that, even when
22 waivers of appeal are permitted in courts by some judges, the
23 Government always has a right of appeal, even if the defendant
24 does not. Certainly here both sides have the right of appeal.

25 MR. PIROZZOLO: Thank you, your Honor.

1 THE COURT: Mr. Reddington, anything additional?

2 MR. REDDINGTON: No, your Honor. Thank you.

3 THE COURT: Ms. Victoria, anything?

4 THE PROBATION OFFICER: No, your Honor.

5 THE COURT: We will be in recess.

6 THE CLERK: All rise.

7 (The Honorable Court exited the courtroom at 1:55 p.m.)

8 (WHEREUPON, the proceedings adjourned at 1:55 p.m.)

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C E R T I F I C A T E

I, Brenda K. Hancock, RMR, CRR and Official Reporter
of the United States District Court, do hereby certify that the
foregoing transcript constitutes, to the best of my skill and
ability, a true and accurate transcription of my stenotype
notes taken in the matter of *United States v. Catherine Greig*,
No. 1:11-cr-10286-DPW.

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Date: September 4, 2012

/s/ Brenda K. Hancock

Brenda K. Hancock, RMR, CRR

Official Court Reporter